SUBJECT INDEX.

ALPHABETICAL LIST OF CASES REFERRED TO.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1919.

LOWER VEIN COAL COMPANY,
Appellant,
vs.
INDUSTRIAL BOARD OF INDIANA, ET AL.,
Appellees.
No. 573.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES.

QUESTION INVOLVED.

In 1915, the General Assembly enacted an elective Workmen's Compensation Act (Act 1915, p. 392).

The original Act left either the employer or employee with the option of rejecting its terms; excepting, however, the Act was made compulsory, under the original provisions

of Section 18, as to municipal corporations, and any political division of the State, and the employees thereof.

In 1917, the original Act was amended and railroad employees engaged in train service were expressly exempted from the provisions thereof.

In 1919 (Acts 1919, p. 158), the General Assembly of the State of Indiana amended Sections 1, 5, 8, 9, 13, 14, 15, 18, 22, 23, 25, 31, 37, 38, 39, 42, 43, 45, 46, 47, 48, 50, 51, 56, 58, 63, 65, 68, 69, 70, 73 and 76, and repealed all laws and parts of laws in conflict with said amendment.

As set out in Appellant's brief, Section 18 of said amended Act of 1919 changed the elective, or permissive system, by extending the compulsory features of the Act to persons, partnerships and corporations engaged in mining coal, and to the employees thereof.

Appellant, by a Bill in Equity, filed in the District Court of the United States for the District of Indiana, sought an injunction enjoining the defendants from enforcing the compulsory features of the Workmen's Compensation Act, upon four grounds, to-wit:

(1) That Section 18, as amended, violates the due process of law clause of the Fourteenth Amendment to the Constitution of the United States.

(2) That it violates the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That it violates Section 23 of the Indiana Bill of Rights, reading as follows: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens." (Article I, Sec. 23, Bill of Rights of the Indiana State Constitution.)

(4) That Amended Section 18 violates Section 21 of the Indiana Bill of Rights, reading as follows: "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor, except in the case of the State, without such compensation first assessed and tendered." (Article I, Sec. 21, Indiana Bill of Rights.)

The question presented before the District Court, and now before this Court, is whether Section 18, as amended, and making compulsory the payment of compensation to persons, partnerships and corporations engaged in mining coal, and the employees thereof, is constitutional.

CONDENSED STATEMENT OF PLEADINGS.

Plaintiff, in its Bill, alleged that it was a corporation organized under the laws of the State of Indiana, and engaged in mining and marketing coal, and employing five hundred men in its business, in the State of Indiana, and that the contracts for hiring its employees are made within the State of Indiana, and that the defendant, Industrial Board of Indiana, is a Board created by the Workmen's Compensation Law of 1915, and the individual defendants are members of said Board; and that the General Assembly of 1915 enacted a Workmen's Compensation Law, which was amended in 1917, and amended in 1919, as set out in plaintiff's Bill; that the Act of 1915, and as amended in 1917, was a permissive Act, and that plaintiff had elected to reject the provisions of the law of 1915, and conduct its business under the Liability Laws of the State of Indiana, and that said election had never been withdrawn; and that after the amendment of Section 18, and other amend-

ments by the General Assembly of 1919, plaintiff served an additional notice in writing, that it refused to comply with the amendments, particularly Section 18, as amended, because such Section 18, as amended, was unconstitutional and void, as claimed by plaintiff, for the reasons set out, that it deprives plaintiff of its property without due process of law, the equal protection of the law, and that it was in violation of Sections 21 and 23 of the Bill of Rights of the Indiana State Constitution; that defendant claimed that all of the amendments of 1919, including amended Section 18, were constitutional, and purposed carrying out the provisions of said amendments, unless enjoined by the Court.

Plaintiff further averred in said Bill that there had occurred, from time to time in the past, and would, in the future, accidents to its employees, resulting without negligence on plaintiff's part, while employed by plaintiff in the course of their employment, and that claims for compensation for such injuries would be filed by said injured employes, or their dependents, with the Industrial Board of Indiana, and that compensation would be awarded in practically all of said cases; and plaintiff says that it believed that during the remainder of the year 1919, there would be more than twenty-five accidents, for which compensation would be claimed, and that the compensation would exceed twenty-five thousand dollars, and that in the defense of certain claims it would be compelled to expend, in attorneys fees and expenses, five thousand dollars, during the remainder of 1919.

Plaintiff wholly failed to allege how many cases there would be during the year 1919, resulting from its negligence, and whether there would be collected, by way of

damages, in litigation, settlement, or compromise, sums that would exceed twenty-five thousand dollars; and plaintiff wholly failed to allege whether it would expend more than five thousand dollars by way of attorneys fees and expenses, in the settlement and defense of such liability claims during the remainder of the year 1919; and plaintiff wholly failed to allege how much said compensation claims would exceed the cost of liability claims, and whether or not plaintiff would, in fact, be damaged at all.

Plaintiff further alleged in its Bill that the business of mining coal was a hazardous one, and claimed, in such Bill, that many other businesses conducted in the State, in which thousands of men are employed, were more hazardous than the business of mining coal, and many other businesses in which thousands of men are employed annually in the State, which are equally as hazardous as the business of mining coal.

The Bill then sets out the number of injuries for the year ending October 1, 1917, to the year ending October 1, 1918, to employees on steam railroads, in iron and steel industries, manufacturing and machine shops, auto manufacturing and repairing, coal mining, general contractors, furniture manufacturers, car manufacturing and repairing, foundries and glass manufactories, and claimed, in said Bill, that the mining business was fifth in point of hazard.

Said Bill claimed that amended Section 18 was unconstitutional and void, and that the singling out of the coal industry, together with the employees of municipal corporations, and the political divisions of the State, was an unfair, arbitrary and discriminatory classification, not based upon any just or reasonable grounds, and that the

Legislature enacted said law without any fair reason in making said Workmen's Compensation Act compulsory and mandatory on persons, partnerships and corporations engaged in the business of mining coal; and that plaintiff was denied the equal protection of the law, because the law was not equal, or uniform in its operations, and that it imposed onerous burdens upon such business, and deprived plaintiff of its property without due process of law, and that said Act was partial, unreasonable, oppressive, unequal and arbitrary.

Said Bill further alleged that plaintiff's property would be taken by awards made by the Industrial Board, where there was no negligence or fault upon the part of the plaintiff.

The prayer of the Bill was for an injunction after notice, and that said injunction be made perpetual, restraining the defendants and their successors in office, from enforcing, in any manner, the provisions of said Act, as amended.

AMENDMENT TO BILL OF COMPLAINT.

Plaintiff, by leave of Court, afterwards amended its Bill, and averred that various corporations, copartnerships and individuals engaged in the business of mining coal, had hundreds of employees who were employed above the ground in clerical work, hauling, carpentering, and similar occupations, and that plaintiff had many of such employees who were not coal miners, and did not dig coal, and that all of said employees are covered by the provisions of Section 18, and if said Section 18 is valid, these employees are entitled to compensation without regard to plaintiff's negligence, for any injuries sustained by them.

It was further averred in said amended Bill that all persons engaged as employes in the actual mining of coal are members of the United Mine Workers of America, which is a labor union, organized and maintained for the protection of its members, and that said United Mine Workers Union employs, in Indiana, attorneys whom it pays by the year to attend to the interests of its members, which attorneys are employed to, and do, prosecute without expense to injured employees or their dependents, all suits for personal injuries, brought by said members, in the State of Indiana; whereas, in other occupations industrial workers have large sums of money to pay, frequently, on a contingent basis, to lawyers representing them in their suits for personal injuries, injured coal miners and their dependents, receive, without abatement, or payment of attorney fees, all damages recovered by them for personal injuries; that persons actually employed in Indiana, in the coal mining business, are paid for their services a higher rate of wages, or compensation, than any other individual worker in Indiana, and that many of them carry policies of insurance protecting themselves and their families against injuries resulting in accident and death.

DEFENDANTS' ANSWER.

Defendants, and each of them, separately and severally, for answer to Plaintiff's Amended Bill, averred as follows:

1. They admit all that part of the averments of plaintiff's bill contained in specification One (1) thereof.

2. They admit all that part of the averments of plaintiff's bill contained in specification Two (2) thereof.

3. They aver that the value of matter in dispute in

this cause is speculative, colorable, and is not susceptible of proof and demonstration with certainty, all which appears upon the fact of plaintiff's bill, and from the matters and facts alleged therein with reference to the value of the matter of dispute.

4. They admit all that part of the averments of plaintiff's bill contained in specification Four (4) thereof.

5. They admit all that part of the averments of plaintiff's bill contained in specification Five (5) thereof.

6. They admit all that part of the averments of plaintiff's bill contained in specification Six (6) thereof.

7. They admit all of the averments contained in subdivision seven (7) of plaintiff's bill except that part thereof which avers that the Workmen's Compensation Act of 1915 as amended in 1917 was a permissive Act, and defendants aver that said Act of 1915 and as amended in 1917 was not a permissive Act but was compulsory as to the State of Indiana, the political subdivisions thereof and the municipalities and the employes thereof, and expressly exempted from the provisions thereof casual laborers, farm agricultural laborers, domestic servants and their employers unless such employees and their employers voluntarily elected to be bound by said act, by giving affirmative notice as specified herein to be bound by the specifications of said Act.

8. They admit that the Industrial Board of Indiana claims that said amendatory Act of 1919 is valid and effective, and particularly Section 18, thereof, as amended by said Acts of 1919, that the provisions thereof compel and require all coal mining companies in the State, including the plaintiff, to come under said law as amended, and the

jurisdiction of said Industrial Board, and that defendant Industrial Board of Indiana and each defendant hereto assert that the compulsory features of said Section 18 is a valid law, and assert that it is their intention to assume jurisdiction in all personal injury cases and to administer the provisions of said law including Section 18, as provided in said law as amended unless enjoined from so doing by this Court, but defendants and each of them aver that plaintiff has not rejected the provisions of the Workmen's Compensation Act as amended in 1919 by the General Assembly of Indiana. Defendants and each of them further aver that said act is constitutional and valid and that plaintiff is bound thereby.

9. They aver that as to the matters and facts set out in specification Nine (9) of plaintiff's bill, with reference to accidents which have and will occur in and about plaintiff's mines and the consequent expense of defending claims arising therefrom, defendants and each of them are without knowledge but defendants and each of them aver that the General Assembly of the State of Indiana in enacting the amendatory Act of 1919, and particularly Section 18 thereof, based the classification made in said Section 18 partially upon the following facts, viz.: That many accidents had theretofore occurred in the operation of the coal mines of Indiana, including the mines of plaintiff, which accidents resulted in the death of and injuries to employees working in said mines in the course of and arising out of their employment, and that in many of such cases such employees and defendants had no redress at law, and that in such cases when such employees and defendants were

afforded redress at law, such redress was found by said General Assembly inadequate, expensive and accompanied by vexatious delays, and that the occupation of mining coal had been extremely hazardous and will continue so to be, and that said occupation of coal mining theretofore contained and would continue to contain inherent hazards and dangers not encountered or contained in any other occupation, business or industry carried on in the State of Indiana.

10. Defendants and each of them aver for answer to specification Ten (10) of plaintiff's bill that they admit all the allegations contained in said specification except the averment that there are businesses conducted in the State of Indiana that are more hazardous than that of mining coal, and defendants and each of them aver that the business of mining coal is more hazardous than any other business, occupation or industry carried on and conducted in Indiana, in this, viz.: That in proportion to the men employed in the business of mining coal and in the operation of coal mines, the percentage of casualties is greater than in any other business, industry or occupation; that the percentage of fatalities occurring in the operation of coal mines is greater than in any other business, occupation or industry conducted therein; that the nature and extent of injuries received by employes engaged in such business of mining coal are more serious, severe and aggravated than those received by employes in other business, industries and occupations; that the hazards and dangers inherent in the occupation of coal mines are more numerous, diverse and varied than any other occupation in Indiana. And defendants and each of them aver that the general

assembly of 1919 based the classification in part upon the foregoing facts alleged in this specification.

10½. Defendants and each of them say for answer to specification 10½ that in the business of mining coal some of the employees engaged therein are employed above ground in the performance of duties which are necessary for the practical operation of said mines, and are not engaged in the mining of coal, but defendants aver that the work performed by such employees above the ground and of those employees that mine coal are all a part of and necessary to the practical and successful operation of said mines and the marketing of the product thereof. That the per cent of employees whose duties require them to work above the ground in said mines is small, and defendants are informed and believe will not exceed on an average of ten per cent of the total employees in the business of mining coal. And defendants further aver that in the year of 1918 more than one hundred casualties occurred among the employees of coal mines in the State of Indiana whose duties require them to work above the ground, ten of which were fatalities, and defendants aver that the duties of a large per cent of the employees that work on and above the ground as aforesaid are such as to make such employment dangerous and hazardous. Defendants further aver that all persons engaged as employees in mining coal, except Company men, are members of the United Mine Workers of America, and that all the employees of the bituminous mines, including plaintiff's, form and comprise District No. 11 of the United Mine Workers of America, which employees number approximately Thirty Thousand (30,000) men, and that said District No. 11, United Mine

Workers of America, employ attorneys at an annual salary to handle and prosecute personal injury claims and suits and compensation claims, and represent the interest of said District No. 11 in legal matters, all from funds voluntarily paid by each and all of said employees; that prior to the employment of said attorneys practically all of the owners and operators of mines in the State of Indiana were and are now organized into an association known and designated as the Indiana Coal Operators' Association, and that such association now employs and for many years has employed attorneys to look after the interests of the operators, including matters of legislation; that after the passage of the Workmen's Compensation Act as amended by the General Assembly of Indiana in 1919, such association employed attorneys to test the validity of said act, and pursuant to such employment, authorization and instructions, plaintiff's amended bill was filed for such purpose. Defendants and each of them further aver as they are informed and believe, that approximately ninety-two (92) persons, firms and corporations engaged in the operations of a majority of the coal mines in the State are members of another reciprocal insurance organization commonly known and designated as the Indiana Operators Reciprocal Organization, which organization employs and retains and has for many years employed and retained a manager, assistant manager, claim adjusters, investigators and numerous attorneys for the purpose of defending suits and securing releases from liability of personal injury claims of miners injured in the mines insured by said Reciprocal Organization, including the mines of this plaintiff, and said defendants further aver that the several persons,

firms and corporations composing said reciprocal insurance organization have rejected the provisions of the Workmen's Compensation Act of 1915, and as amended in 1917, and were not operating such mines under the provisions of said act at the time of the enactment of said Section 18 of said law as amended in 1919, and defendants and each of them further aver that if said Section 18 as amended in 1919 is declared to be unconstitutional and void, that the members of said organization will continue to operate their said mines under the liability laws of the state and will reject the provisions of the Workmen's Compensation Law, and that the employees and dependents thereof will thereby be deprived of the benefits of the Workmen's Compensation Laws of Indiana, and be subjected to the delays, expenses, inadequate settlements, and vexations incident to the collection and attempted collection of damages, and in many cases said employees and dependents under said liability laws will not be able to establish their causes of actions in the courts and will be entirely defeated and without any remedy or redress and will become the objects of charity. Defendants and each of them further aver that the allegation in plaintiff's amended bill in said specification 10½ thereof, that persons employed in Indiana in mining coal are paid a higher rate of wages than any other industrial workers in Indiana is based upon statistics for the period of world war, during which time the coal mines of Indiana, including plaintiff, operated full time and full capacity, which resulted in an abnormal increase in wages, but defendants aver that prior to said war period and subsequent thereto that the earnings of the miners were and are materially less than during said war period, and

that the earnings of coal miners are now materially less than many industrial workers.

11. They aver in answer to specification Eleven (11) of plaintiff's bill that Section 18 of the Compensation Law of Indiana as amended in 1919 is constitutional and valid for the reasons following, to-wit:

(a) The General Assembly of Indiana had the power under the Fourteenth Amendment of the United States Constitution to make the classification as specified in Section 18 as amended in the exercise of its police power.

(b) That the classification as adopted by the Legislature as amended in 1919 is founded upon reasonable basis and does not offend as against the equal protection clause of said Fourteenth Amendment.

(c) The classification made by the Indiana General Assembly in Section 18 as amended in 1919 should be sustained upon the following facts which can have reasonably been conceived to have existed in the State of Indiana and in fact did exist at the time of the enactment of said Section, viz.:

That at said time there were in operation in the State of Indiana approximately Two Hundred Thirty-nine (239) coal mines employing approximately Thirty Thousand (30,000) men. That said mines in the main were conducted and operated by means of shafts sunk from the top of the ground to the vein of coal operated, and that over the top of said shafts tipples were built and constructed of iron and steel about one hundred feet high in which were constructed and built, screens, shakers, crushers, dumps and chutes so as to convey coal down to the railroad cars underneath. Railroad tracks were constructed in, about

and around said tipples; engine houses, boiler houses, wash houses, blacksmith shops, and other houses were built close to said tipples, and that in said engine houses there were constructed mechanical apparatus, including cylindrical drums, around which were attached wire rope for hoisting and lowering said cage from the top of said tipples to the bottom of said shafts, and large dynamos were built, constructed and operated which generated electricity of high and dangerous voltage for the operation of motor cars and mining machines in said mines, and from the bottom of said shafts there were cut, dug and driven entries, cross entries and air courses, and on the bottom thereof there was laid trackage ways which followed said seams and veins of coal up and down grades of various degrees of incline and decline. That over said veins and seams were roofs of limestone, sandstone, slate and other substances, which roofs were filled with slits and faults which made said roofs liable to fall at any time without notice or warning, and that said roofs were supported by timbers, props, caps and cross bars; that off of said entries and cross entries there were work rooms several feet apart in which miners were digging and loading coal, and that in certain mines commonly called and designated machine mines, large mining machines would undercut the coal, which machines were propelled by means of electricity of high and dangerous voltage supplied by means of uninsulated copper wires strung along said entries and air courses, and that after said rooms and faces of said entries were undercut, holes were drilled in said coal and powder placed therein and said coal shot and blasted down, and the loaders would load the same in coal cars which were propelled by means

of mules and ponderous electric motors propelled by means of trolley wires strung along near the top of said entries, which entries ranged from seven to fourteen feet in width, and were filled with timbers, props, gob, loose slate, debris, trolley wires, machine wires and other obstructions that endangered the lives and limbs of said mule drivers, motormen and trip riders, and that said veins of coal, of which five veins were working in the bituminous fields and at least two veins were working in the block coal fields of Indiana, emitted dangerous and deadly noxious and inflammable gases which would collect in pockets in abandoned workings and other workings, and which gases frequently ignited by the lights and lamps of miners thereby causing explosions and great destruction of health and lives of numerous employees, and many of said mines contained what is commonly known as black damp that insidiously overcame and asphyxiated miners therein. That in the operation of said mines there were many and divers different ways of work and occupations and that men were injured, wounded and killed in many various ways, both below and above the ground, to-wit: on and in and on account of railroad cars, screens, shakers, engine rooms, boiler rooms, pulleys, belts, dynamos, wash houses, scales, blacksmith shops, tipples, cages, bottoms of shafts, entries, cross entries, trackways, haulageways, switches, frogs, uninsulated machine wires, uninsulated trolley wires, trimming flats, motor cars, coal cars, mules, mule trips, mining machines, cutter bars, falls from roof, falls from loose coal, erectrocution, falling down shafts, black damp, white damp, marsh gas, dust explositions, windy shots, shots, powder explosions, falling timbers, rubbing ribs of coal, coupling cars, falling from

tail chains and many other ways and manners both accidentally and through the carelessness, negligence, fault and omission of duty of other persons and co-employees, all of which happened prior to the meeting of the General Assembly of the State of Indiana of 1919, and which will continue to happen, and that owing to the peculiar nature of the ways and methods of mining coal in said coal mines in Indiana, said business was, is and will continue to be more hazardous, and accidents have and will occur in more varied ways than in any other business, industry or occupation, and that practically all of the other industries, and business of the state, except the operators of coal mines, had voluntarily accepted the provisions of the Workmen's Compensation Law, and were paying compensation for injuries and that said coal industry was the only industry in Indiana that was refusing to avail itself of the provisions of the workmen's Compensation Law of Indiana and that a large majority of the coal operators and persons, firms and corporations operating said mines had elected to reject the provisions of said Act, and the only other industry or occupation that was not operating under the provisions of said Act were the railroads, which, at the time of the meeting of the General Assembly of 1919 were being controlled and operated by the United States Government, and that the United States Railroad Administration and the employees thereof were subject to an act of Congress of the United States for the year of 1916 entitled "An Act to provide compensation for the employees of the United States suffering injuries while in the performance of their duties, and for no other purpose." And that the employees of said railroads so working for the United States Railroad

Administration were not military employees but civil employees of the United States within the meaning and terms of said act of Congress.

Defendants and each of them further aver that said act is not invalid because it violates Section 23 of Article I of the Bill of Rights of the Constitution of the State of Indiana as charged in subdivision 2 of specification 11 of plaintiff's bill, for the following reasons and each of them, namely:

(a) Said act is a fair and reasonable classification, and the Legislature in the exercise of its police power was not limited by the Indiana Constitution from making the classification named in the act.

(b) That the classification is not unjustly or unreasonably discriminatory against plaintiff and other persons, firms, partnerships and corporations engaged in the business of mining coal, and in favor of other equally hazardous and dangerous businesses, as alleged, but defendants and each of them aver that in the exercise of its police power the classification made within said act was legitimate, reasonable and constitutional.

(c) Defendants and each of them further aver that the classification fixed by said act is just and reasonable, and founded upon conditions and facts justifying the classification.

Defendants and each of them aver that said act is valid and does not violate Section 21, Article I, of the Bill of Rights of the Indiana Constitution, as alleged in plaintiff's bill, for the following reasons, to-wit:

(a) Because the Legislature had the constitutional right in the exercise of its police power to require the

plaintiff to pay compensation to its employees pursuant to awards made by the Industrial Board of Indiana in cases where there was no negligence or fault on the part of the plaintiff, even though other persons, firms and corporations would not be subjected to the same liability because the classification contained in the act is supported upon a reasonable basis.

(b) Because in the exercise of its police power the Legislature has the right to require plaintiff to pay compensation to its employees pursuant to the awards of the Industrial Board as provided in said act, regardless of whether said injuries were proximately caused by the negligence of plaintiff.

12. The defendants and each of them aver that as to each and every averment of plaintiff's bill, not herein specifically admitted, denied or explained, defendants say that they and each of them are without knowledge.

13. Defendants and each of them aver that inasmuch therefore that plaintiff is not entitled to the relief prayed for in its bill, and that said act is valid and constitutional, as to the United States Constitution and as to the Indiana Constitution, defendants and each of them prayed that the injunction as prayed for be in all things denied, and that the interlocutory injunction be in all things dissolved, and that said Section 18 as amended be declared constitutional and valid and not in violation of the Constitution of the United States and the Constitution of the State of Indiana, and for such other and further relief in the premises as may be required by equity and good conscience.

BRIEF OF ARGUMENT.

POINTS AND AUTHORITIES.

1. A Legislature is presumed to have acted within constitutional limits, upon full knowledge of the facts, and with the purpose of promoting the interests of the people as a whole, and the courts will not lightly hold that an act duly passed by the Legislature, was one in the enactment of which it has transcended its power.

> Atchison, Topeka R. R. Co. v. Mathews, 174 U. S. 104.

2. So long as legislation applies impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances, both in privilege conferred and liability imposed, it cannot be said to be violative of the equal protection clause of the Fourteenth Amendment.

> Magoun v. The Illinois Trust and Savings Bank, 170 U. S. 293.

3. That the business of coal mining is attended with dangers that render it the proper subject of regulation by the State, in the exercise of the police power, is entirely settled.

> Plymouth Coal Co. v. Pennsylvania, 232 U. S. 540.

4. It is the province of State courts to construe and interpret State statutes when called upon to do so, as to

whether they violate their State Constitution, and such construction, adopted by the State courts, will be the one adopted by the Federal courts.

L. and N. R. R. Co. v. Garrett, 231 U. S. 298;
Pelton v. National Bank, 101 U. S. 143;
Michigan Central Ry. Co. v. Powers, 201 U. S. 245.

5. The Indiana Legislature (Burns R. S., 1914, Sec. 8624a; Acts 1911, p. 658, in force April 1, 1911) provided, among other things, "That the business of mining coal is hereby declared a dangerous occupation, industry and business."

6. The Indiana Workmen's Compensation Act is declared to be, in the title, "An Act to promote the prevention of industrial accidents," etc.; Acts 1915, p. 392, in force March 8, 1915.

7. The police power reserved in the State is as broad and plenary as the taxing power.

Mountain Timber Co. v. Washington, 243 U. S. 219;
Kidd v. Pearson, 128 U. S. 1.

The Supreme Court of the State of Indiana has held the power of taxation to be inherent in the State, and a legislative power limited only by the provisions of the Indiana State Constitution itself.

State v. Halter, 149 Ind. 292.

8. It is competent and within the power of the Indiana

Legislature, under the Indiana State Constitution, in the exercise of police power, to take steps for the protection of the lives and limbs of all persons who may be exposed to dangerous agencies in the hands of others, and enact classifying legislation on the basis of peculiar hazards in a given industry, and the Indiana Employers' Liability Act (Acts of 1893, p. 294) was upheld because a particular classification of the Act was made on the basis of peculiar hazards in railroading, and because it applied equally to all employers and employees within the class, and, hence, violated neither Section 23 of the Indiana Bill of Rights nor the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

Indianapolis Union Ry. Co. v. Hulihan, 157 Ind. 494.

9. The enforcement of regulations enacted in the proper exercise of the police power of the State cannot be resisted as the taking of private property without compensation, in violation of Section 21 of the Indiana Bill of Rights.

Stone v. Fritts, 169 Ind. 361;
State v. Richcreek, 167 Ind. 217;
Levy v. State, 161 Ind. 251;
City v. West, 9 Ind. 74.

10. No existing State compensation law has ever been declared by the Supreme Court of the United States to be

in violation of the due process, or equal protection clauses of the Fourteenth Amendment.

N. Y. Cent. R. R. Co. v. White, 243 U. S. 188;
Hawkins v. Bleakley, 243 U. S. 210;
Mountain Timber Co. v. Washington, 243 U. S. 219;
Middleton v. Texas Power & Light Co., 249 U. S. 152;
Arizona Copper Co. v. Hammer, 250 U. S. 400.

11. A liberal construction of statutes and a strict construction of constitutional provisions are a safe and reasonable judicial policy.

Walcott v. Wigton, 7 Ind. 44;
Lafayette v. Geiger, 34 Ind. 185.

12. The Indiana State Constitution is not a grant of power to the Legislature, but a limitation of its general power.

Hovey v. Carson, 149 Ind. 395.

13. A statute will not be held unconstitutional merely because it is unjust and repugnant to general principles of justice, liberty, or rights not expressed in the Indiana State Constitution.

Craig v. Western Paving Co., 143 Ind. 358;
State v. Gearhart, 145 Ind. 439;
Zapf v. State, 145 Ind. 696;
Grelle v. Wright, 145 Ind. 699.

14. Courts may not declare an act void merely because, in their opinion, it is opposed to the spirit supposed to pervade the Constitution.

Horning v. Wendell, 57 Ind. 171;
Logansport v. Seybold, 59 Ind. 225.

15. The courts will presume in favor of the constitutionality of a law until the contrary clearly appears.

State v. Cooper, 5 Blackford 258;
Stocking v. State, 7 Ind. 326;
Brown v. Buzan, 24 Ind. 194;
Groesch v. State, 43 Ind. 547;
Lucas v. Beard, 44 Ind. 524;
State v. Denny, 118 Ind. 382.

16. In determining whether a statute is constitutional it is the duty of the courts to give such construction to it, if possible, as will uphold the act.

Main v. State, 4 Ind. 342;
Aker v. State, 5 Ind. 193;
Hovey v. Carson, 119 Ind. 395.

17. A statute will not be declared unconstitutional unless no doubt exists on the question.

Clore v. State, 60 Ind. 17;
Parker v. State, 33 Ind. 178;
Smith v. Indianapolis Ry. Co., 158 Ind. 425.

18. The power of the courts to declare a statute of the State unconstitutional is a high one, and is never exercised

in doubtful cases. To doubt is to resolve in favor of the constitutionality of the law.

Bush v. the City of Indianapolis, 120 Ind. 476.

19. Where two constructions of a State statute are open, that is to be adopted which preserves the constitutionality of the act.

C., C., C. & St. L. Ry. Co. v. Backus, 133 Ind. 513;
State v. Lowry, 166 Ind. 372.

20. The Supreme Court of Indiana has held that Article I, Section 23, of the Bill of Rights of the Indiana State Constitution, is substantially the same as the privileges and immunities clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, in upholding the validity of the bulk sales statute.

In the case of Hirth, Krause Co. v. Cohen, 177 Ind. 10, the court said:

> "The provisions of Article I, Section 23, of our Constitution, so far as the question here involved is concerned, are substantially the same as the privileges and immunities clause of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and as the Act from which the Act in question was copied has been held by the Supreme Court of the United States not violative of the Fourteenth Amendment, we are constrained to hold that it does not violate the privileges and immunities section of our Constitution, but, on the other hand, is a proper exercise of the police power of the State."

21. The Indiana Legislature has, on many different occasions, exercised its police power by enacting legislation relating solely to the business of coal mining, and, in every instance, such legislation has been upheld when attacked.

State v. Barrett, 172 Ind. 169;
Barrett v. State, 229 U. S. 26;
Maule Coal Co. v. Partingheimer, 155 Ind. 100;
Davis Coal Co. v. Polland, 158 Ind. 607;
Booth v. State, 179 Ind. 405;
Booth v. State, 59 Law Ed. U. S. 1011;
Warren v. Sohn, 112 Ind. 213.

22. The Employers' Liability Act of Indiana (Acts 1911, p. 145) applying only to persons, firms and corporations employing five or more persons, was upheld.

Vandalia Ry. Co. v. Stillwell, 181 Ind. 267;
Terre Haute Ry. v. Weddle, 183 Ind. 305;
Kingan & Co. v. Clements, 184 Ind. 213.

ARGUMENT.

LEGAL PROPOSITIONS.

Plaintiff contends that Section 18 of the Workmen's Compensation Act, as amended by the General Assembly of Indiana, for the year 1918, is unconstitutional, for the reason that compelling coal mining companies to operate under a law, and permitting other business corporations, firms and individuals to reject its provisions, is a discriminatory classification, founded on no differences in the businesses, and that the facts adduced by the evidence in those clauses support this contention.

For the purpose of sustaining this contention plaintiff has alleged, in its Bill, that certain industries are much more hazardous than the mining of coal, and, on the trial, introduced evidence presumably for the purpose of sustaining the facts alleged in the Bill.

The issue of facts tendered by plaintiff is one of comparative hazard, and also the fact that the United Mine Workers are a favored class because they employ attorneys at an annual salary, to represent the membership in personal injury litigation and hearings before the Industrial Board of Indiana, and that certain employees of the plaintiff, and other coal companies, are persons who do not dig coal, but work above the ground, which they claim are arbitrarily brought under the provisions of Section 18 as amended.

No other issue of fact whatever has been tendered by the plaintiff in support of this contention, and no other

reason whatever has been advanced, or suggested by it, in support of this contention.

It is the contention of the defendants that the suggested bases of facts set out in the Brief of Plaintiff, and urged by it in support of its contention that the law is invalid, unless they are sufficient under the law, to overturn the Act, it must be upheld, unless, under the law, the courts find, outside the evidence, some reason other than as assigned by plaintiff for holding Section 18 invalid.

The burden of proof is upon the plaintiff. The presumption is in favor of the validity of the law, and that presumption must be overcome by real, tangible evidence. Mere criticism that it does not extend to other classes of employment does not, and cannot, amount to a constitutional objection.

Plaintiff has chosen the issue of hazard as the chief test of the validity of the law, and on page 38 of Appellant's Brief, has admitted and conceded that it is within the constitutional authority of the Indiana Legislature to enact a Workmen's Compensation Act, in which a fair and reasonable classification is made, and uses the following language:

> "While admitting that it is within the constitutional authority of a State Legislature to pass a Workman's Compensation Act, in which a fair and reasonable classification is made, the question here to be considered is whether the Legislature may enact a general compensation law applicable to all employers and employees within the State, and make it compulsory as to one hazardous employment, and elective as to all others, except railroad employees in train service, to whom it does not apply at all."

Appellant having conceded that it is within the power of the Indiana General Assembly to enact a compulsory compensation law, provided that the Act is fair and reasonable in its classifications, disposes of its fourth objection, that it violates Section 21 of the Indiana Bill of Rights, reading as follows:

> "No man's particular services shall be demanded without just compensation. No man's property shall be taken by law without just compensation; nor except in the case of the State, without such compensation first assessed and tendered."

In other words, plaintiff has conceded that Section 18, as amended, does not interfere with its rights under the Indiana Constitution, as to due process of law.

We respectfully cite that in Appellant's Brief, on page 25, we find this statement:

> "These figures demonstrate that even conceding that hazard is the proper test to determine whether a fair and reasonable classification has been made (which we do not admit) that the risks ordinarily incident to other occupations are much greater than those prevailing in the mining of coal."

Having tendered hazard as one of the tests of the validity of Section 18 of the Amended Act, and having, in the above quotation, not admitting that hazard is the test, we respectfully wish to inquire, What, then, is the proper test?

If the test is some other than that of hazard, what facts have been proven by the plaintiff, in support of some test other than that of hazard, from which the courts can ad-

judge the law to be unfair, unreasonable, arbitrary and discriminatory against the plaintiff? Does the naked showing of a classification furnish a proper test? If not, and if as plaintiff says, hazard is not a proper test, then the defendants contend that the question at issue must be determined from consideration other than the evidence adduced by plaintiff in support of its contention.

This leaves no other test except the issues presented by Plaintiff's Amended Bill, set out under Section 10½, p. 44 of the Transcript of Record, and reading as follows:

> "Plaintiff alleges that the various corporations, co-partnerships and individuals engaged in the coal mining business in the State of Indiana, have hundreds of employees who are not engaged in the hazardous part of such business, but are employed above the ground, in clerical work, hauling, carpentering, and other similar occupations; that plaintiff, itself, has many employees so engaged, and that said employees last referred to, are not coal miners, and do not dig coal, and that all of said employees are, as plaintiff believes, covered by the provisions of Section 18, as amended; that plaintiff is compelled, if said Section 18, as amended, is a valid and effective law, to pay compensation to all of such employees last specifically referred to, without regard to its negligence in the premises, while other persons, co-partnerships and corporations engaged in other businesses, are not compelled to do so.
>
> "Plaintiff avers that practically without exception, all persons engaged as employees in the actual mining of coal, in the State of Indiana, are members

of the United Mine Workers of America, which is a labor union organized and maintained for the protection of its members; that said United Mine Workers Union employs, in Indiana, attorneys whom it pays by the year to attend to the interests of its members, and which attorneys are, by said union, employed to, and do, prosecute, without expense to injured employees, or their dependents, all suits for personal injuries brought by said members in the State of Indiana, and that, whereas in other occupations, the industrial workers have large sums of money to pay, frequently on a contingent basis, to lawyers prosecuting their suits for personal injuries, injured coal miners, and their dependents, receive, without abatement, or payment of attorney's fees, all damages recovered by them for personal injuries.

"Plaintiff further avers that the persons actually employed in Indiana in the mining of coal, are paid for their services a higher rate of wages, or compensation, than any other industrial workers in Indiana, and that they are able, and many of them do, carry policies of insurance, protecting themselves and their families against the injuries resulting in accident and death.

"Said act is invalid because it includes within its terms all employees of coal mining companies, whether engaged in the hazardous part of the coal mining business, or not, and is mandatory as to all such employees, and as to the employers of all such employees; whereas, as to employees of other private business corporations, co-partnerships and individ-

uals, it is not mandatory as to those engaged in the non-hazardous part of such employments, but is permissive only, and excludes from its operation railroad employees engaged in train service."

(a) Briefly stated, plaintiff contends that Section 18 is unconstitutional by reason of a certain contract of employment between the United Mine Workers of America and their attorneys.

(b) That the persons actually employed in Indiana, in mining coal, are paid for their services a higher rate of wages, or compensation, than any other industrial workers in Indiana, and they are able, and many of them do, carry policies of insurance protecting themselves and their families against the injuries resulting in accident and death.

(c) That said Act is invalid because it includes within its terms all the employees of coal mining companies, whether engaged in the hazardous part of the coal mining business or not.

In answer to the objection that the United Mine Workers employ attorneys, and that they are a favored class, we call the attention of the court to the fact that appellant's counsel have cited no authorities showing that the constitutionality of an act may be dependent upon any contracts between client and attorney.

Plaintiff's allegation that the persons employed in the mining of coal are paid for services a higher rate of wages than the employees in any other industry in Indiana, is not borne out by any evidence in the record, because plaintiff never introduced any evidence as to the wages of other industrial employees in the State of Indiana, and that the allegation is wholly unsupported by any evidence introduced at the trial of the cause.

As to proposition "c", that there are certain employees not engaged in the hazardous part of the coal mining business, plaintiff has failed to demonstrate such charge, and we respectfully call attention to the Tables, Nos. 170 and 171, p. 90, of Transcript of Record, as follows:

170 "Table of Accidents No. 1.

Arranged according to occupation of the injured party, the fatal, permanent, serious and slight accidents being shown separately.

Occupation of Injured Party.	Fatal.	Permanent.	Serious.	Slight.	Total.
Miners	42	1	103	315	461
Machine runners	2	.....	24	52	78
Machine helpers	2	.....	14	36	52
Motormen	3	.....	13	37	53
Drivers	12	.....	80	261	353
Roadmen	1	.....	5	26	32
Jerrymen	15	.....	20	77	112
Trappers	2	.....	8	14	24
Cagers	.....	.....	15	25	40
Pumpers	1	.....	5	4	10
Electricians	2	.....	1	14	17
Trip riders	7	.....	36	91	134
Car couplers	.....	.....	9	19	28
Bratticemen	.....	.....	3	2	5
Boss drivers	1	.....	1	6	8
171.					
Mine bosses	3	.....	2	4	9
Room bosses	.....	.....	1	3	4
Fire bosses	.....	.....	1	3	4
Superintendents	.....	.....	1	1	2
Shot firers	9	.....	14	11	34
Engineers and firemen	.....	.....	2	3	5
Flat trimmers	1	.....	3	16	20
Timbermen	4	.....	10	19	33
Weighman	.....	.....	.....	2	2
Top hands	6	.....	9	30	45
Top bosses	1	.....	1	2	4
Blacksmiths	.....	.....	1	8	9
Miscellaneous	.....	.....	9	4	13
Totals	114	1	391	1,805	1,591

"That the figures in the above table show the reports of accidents to the Mining Department and the Industrial Board; that these reports are from mines employing ten or more people."

These tables demonstrate that there were injuries as follows: To top men: pumpers, 10; electricians, 17; engineers and firemen, 5; weighmen, 2; top hands, 45; top bosses, 4; blacksmiths, 9; making a total of 92 injuries; and if hazard is a test, such figures, or statistics, might have been considered by the Legislature in enacting Section 18.

The clause of the Fourteenth Amendment of the Constitution of the United States, especially invoked, is that which prohibits a State denying to any citizen the equal protection of the law. Plaintiff contends that this clause has been violated. What satisfies this equality? Under what principles of law is this question to be determined, and from what point of view must the court consider the facts? What must be shown by one who asserts the inequality of the legislative enactment? What test is there of reasonableness, or unreasonableness of the classification, under the facts adduced by the evidence in this case?

It is the contention of the defendants that a consideration of these questions is necessary to a just determination of the issues in this case, and that the answers are to be found in the cases involving the discussion of the main question, namely: Is the Act open to the criticism that it is unjustly discriminatory?

We would call the Court's attention to the case of Plymouth Coal Co. v. Pennsylvania (232 U. S. 531). This was a case involving the constitutionality of a section of the Anthracite Mining Laws of the State of Pennsylvania,

being Section 10 of Article III of the Act of June 2, 1891, in which the State Legislature of Pennsylvania, acting under its police power, made certain provisions that were obligatory upon the owners of adjoining coal properties, to leave, or cause to be left a pillar of coal in each seam, or vein of coal worked by them, along the line of the adjoining property, of such width, taken in connection with the pillar to be left by the adjoining property owner, would be a sufficient barrier for the safety of employees of each mine, in case the other should be abandoned and allowed to fill with water, etc.

The Court, in that case said:

> "That the business of mining coal is attended with danger that renders is the proper subject of regulation by the State, in the exercise of the police power, is entirely settled."

The Court again said:

> "We may once more repeat what has often been said, that one who would strike down a State statute as violative of the Federal Constitution, must show that he is within the class with respect to whom the Act is unconstitutional, and must show that the alleged unconstitutional feature injures him, and so operates as to deprive him of rights protected by the Federal Constitution."

So, in the case at bar, plaintiff has alleged in its Bill certain facts assuming to make hazard a test, and, as we have pointed out, has then admitted that hazard is not the

test; and has failed to prove any other allegations respecting any other issues than that of hazard.

The Supreme Court of the United States, in the case of Atchison, Topeka R. R. Co. v. Matthews, 174 U. S. 104, used the following language:

> "It is also a maxim of constitutional law that a Legislature is presumed to have acted within constitutional limits upon full knowledge of the facts, and for the purpose of promoting the interests of the people as a whole, and courts will not lightly hold that an Act duly passed by a Legislature, was one in the enactment of which it has transcended its power."

The Supreme Court of the United States also, in the case of Magoun v. Illinois Trust and Savings Bank, 170 U. S. 293, in discussing the equality clause of the Fourteenth Amendment to the Constitution of the United States, used the following language:

> "What satisfies this equality has not been, and probably never can be, precisely defined. Generally it has been said that it only requires the same means and methods to be applied impartially to all the constituents of a class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. It does not prohibit legislation which is limited either in the objects to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privilege con-

ferred and the liabilities imposed. Similar citations could be multiplied, but what is the test of likeness and unlikeness of circumstances and conditions? These expressions have almost the generality of the principles they are used to expound, and yet they are definite steps to precision and usefulness of definition, when connected with the facts of the cases in which they are employed. With these for illustration it may be safely said that the rule prescribes no rigid equality, and permits to the discretion and wisdom of the State a wide latitude, as far as interference by this Court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in Mobile County v. Kimball, 102 U. S. 691, that this Court is not a harbor in which can be found a refuge from ill advised, unequal and oppressive State legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of State laws is not necessarily an objection to their constitutional validity.'

The rule, therefore, is not a substitute for municipal law; it only prescribes that that law have the attribute of equality of operation, and equality of operation does not mean indiscriminate operation on persons merely as such, but on persons according to their relations. In some circumstances it may not tax A more than B, but if A be of a different trade or profession than B, it may. And in matters not of taxation, if A be of a different kind of corporation than B, it may subject A to a different rule of responsibility to servants than B."

In Arizona Employers' Liability cases, 250 U. S. 419, Mr. Justice Pitney, in delivering the opinion of the Court, used the following language:

> "Some of the arguments submitted to us assail the wisdom and policy of the Act because of its novelty, because of its one sided effect in depriving the employer of defenses, while giving him (as is said) nothing in return, leaving damages unlimited and giving to the employee the option of several remedies, as tending not to obviate, but to promote, litigation, as pregnant of danger to the industries of the State. With such considerations this Court cannot concern itself. Novelty is not a constitutional objection. Since, under constitutional forms of government each State may have a legislative body endowed with authority to change the law. In what respects it shall be changed, and to what extent, is, in the main, confided to the several states, and it is to be presumed that their Legislatures, being chosen by the people, understand and correctly appreciate their needs. The States are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment, and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts."

Applying the principles of law above cited to the facts adduced by the evidence in this case, it is the contention of the defendants that Section 18 is not an unjust and arbitrary discrimination against the plaintiff. The law does not prohibit legislation which is limited, either in the object

to which it is directed, or by the territory within which it is to operate. It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and like conditions, both in the privilege conferred and the liabilities imposed and that such classification may be made with reference to the coal industry, is not an open question.

Plaintiff does not contend, and has not proven that it is discriminated against, as against any other competitor engaged in the coal mining business in the State of Indiana. All persons, firms, partnerships and corporations are treated alike, under like circumstances and conditions, both in the privileges conferred and the liabilities imposed.

The Workmen's Compensation Act relieves plaintiff as it does every other person, firm and corporation, from being sued under the common law, or any liability law. All are treated alike, and all have this privilege conferred upon them.

On the other hand, plaintiff and every other mining company, person and individual engaged in the coal business in the State of Indiana, are treated with the same provisions, and, so far as the Indiana Workmen's Compensation Law is concerned, competition is absolutely fair between them.

And so, in making classifications, the Legislature had a right to deal, as it has often done in Indiana, with the coal industry as a class by itself. It is perfectly obvious that the coal industry as a class, does not compete with any other industry, as a class. All the competition is by and between the different persons, firms, partnerships and corporations engaged in the coal mining business.

As set out in Appendix A of this Brief, it can be readily seen that the coal industry is an industry in which the State has provided an inspector, and that the State, on various occasions, and in many ways, in exercising its police power, has dealt with this industry because it concerns the safety, peace, well being, health, life and limb of a large portion of the citizens and employees engaged in the coal business, numbering, according to the evidence, in a sum approximating 30,000 men.

Each of these various enactments are special in their character, and discrimination has often been made by singling out the industry to the exclusion of all other industries, and yet, in every case where these special laws have been attacked upon constitutional grounds, the Supreme Court of Indiana has sustained them, without a single exception.

The Indiana Legislature (Sec. 5471, R. S. 1881) provided for the giving of miners and other persons employed in and about coal mines a prior lien on the mining property, for work and labor, and the land owners a prior lien for royalty, and in the case of Warren et al. v. Sohn et al., 112 Ind. 213, the Supreme Court, in upholding the validity of such legislation, said:

> "Appellant's counsel claim that the statutory provisions heretofore quoted are in conflict with Section 23 of Article I of our State Constitution, which declares 'that the General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which by their terms shall not equally belong to all citizens. Counsel further claim that such statutory provisions contravenes so much of Section 1 of

Article XIV, of the Federal Constitution, as declares in effect, that no State shall deny any person within its jurisdiction the equal protection of the law.'

"We cannot see, however, that the statutory provisions quoted are in conflict with either one of the declarations of our fundamental law, State or Federal, cited and relied upon by appellant's counsel. Certainly it cannot be said, with any degree of legal accuracy, that these statutory provisions denied to any person within the jurisdiction of this State, in any manner, or to any extent, the equal protection of the law. Nor can it be correctly said, we think, that the General Assembly can, or, by the enactment of such statutory provisions, has granted any citizen, or class of citizens, privileges or immunities which, upon the same terms, would equally belong to all citizens.

"We do not doubt that if appellant, or any one or more of them, had performed work and labor in and about the mortgagor's coal mines, they might have acquired liens under the statutory provisions quoted, in the same manner, and upon the same terms as the appellees acquired their liens, and of equal priority therewith.

"As applied to the facts of this case, as found by the trial court, we are of the opinion that the statutory provisions, as above quoted, are not in contravention or in conflict with our fundamental laws, State and Federal, and are a constitutional and valid expression of the legislative will upon the subject of such statutory provisions."

This was a statute that gave only miners the right to

have liens, under the provisions of the law, and as it treated all coal companies and owners alike, under like circumstances, both in privileges conferred and liabilities imposed, it was not held to be in contravention of the Indiana Bill of Rights, or of the Fourteenth Amendment.

In the case of Davis Coal Co. v. Polland, decided in 158 Ind. 607, the Coal Mining Act was attacked on the grounds that it was class legislation, and the Indiana Supreme Court used the following language: (Quoting from p. 616.)

> "Freedom of contract should not be lightly interfered with. As a general rule, the right of contracting as one sees fit stands untrammeled. But the State has power to restrict this right in the interest of public health, morals, and the like. When, in the present case, it is pointed out that the Legislature has failed in terms to deny the employee's right to assume the risks from his employer's disregard of the statute, the question is not ended. If the Legislature has clearly expressed the public policy of the State on a matter within its right to speak upon authoritatively, and if that public policy would be subverted by allowing the employee to waive in advance his statutory protection, the contract is void as unmistakably as if the statute in direct words forbade the making of it. If mines and factories and stores and railroads were to stand vacant, were not to be operated by citizens in whose lives and limbs the State has interest, it is inconceivable that the Legislature would have spoken as it has, even if it had authority to do so. To promote safety to life and limb, as indisputably as to advance public health,

education and morals, to prohibit usury, to provide for exemption and stay of execution, the Legislature has the right to act.

"The statute in question is not class legislation. Employments differ in degree of hazard. Each has its separate dangers, which must be guarded against in the appropriate way. To classify legislation by distinctions that naturally inhere in the subject matter is not to indulge in class legislation. A law is general and uniform if all persons in the same circumstances are treated alike.

"The purpose of this statute to promote the safety of miners being clear, and the right of the Legislature to pass it being unquestionable, the court should not declare it a dead letter. If the employer may avail himself of the defense that the employee agreed in advance that the statute should be disregarded, the court would be measuring the rights of the persons whom the lawmakers intended to protect by the common law standard of the reasonably prudent person, and not by the definite standard set up by the Legislature. This would be practically a judicial repeal of the act."

In the Act of 1907, p. 193, the Indiana General Assembly, exercising its police power, enacted what was commonly known and designated as the "Wash House Law," which applied "To only persons in charge of coal mines and collieries, and other places where laborers employed are surrounded by, or affected by similar conditions as employees in coal mines."

The validity of this law was attacked as being in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of Article I, Section 21, and Article I, Section 23, of the Bill of Rights of the Indiana State Constitution. And, in the case of Booth v. State, 179 Ind. 411, the Indiana Supreme Court used the following language:

> "It rests solely with the legislative discretion, inside the limit fixed by the Constitution, to determine when public safety or welfare requires the exercise of the police power. Courts are authorized to interfere and declare a statute unconstitutional only when it conflicts with the Constitution. With the wisdom, policy or necessity of such enactment, they have nothing to do. The Act is not open to the infirmity suggested by the appellant, in that it only applies to coal mines, and not other classes of business."

This same question was raised in the case of Soon Hing v. Crowley, 113 U. S. 703, and decided adversely to the contention of appellant. Justice Field uses the following language in the latter case:

> "The specific regulations of one kind of business, which may be necessary for the protection of the public can never be the just ground of complaint, because like restrictions are not imposed upon other businesses of a different kind. The same doctrine was declared in Barbier v. Connelly, 113 U. S. 27. 'It will not be doing violence to any of the authority

cited by the learned counsel for the appellant to say that the question of whether the Act is reasonable is only for the Legislature, provided it shall operate alike on all members of a particular class.' "

The wash house case was transferred, on Writ of Error, to the Supreme Court of the United States, and the judgment of the Indiana Supreme Court was affirmed in the case of Booth v. Indiana, 237 U. S. 391. Mr. Justice McKenna, in delivering the opinion of the Court, on p. 396, used the following language:

"But a distinction is sought to be made between what a Legislature may require for the safety and protection of a miner, while actually in service below ground, and that which may be required when he has ceased, or has not commenced, his labor. Cases are cited which, upon that distinction, have decided that when a miner has ceased his work, and has reached the surface of the ground, his situation is not different from that of many other workmen, and that, therefore, his rights are not greater than others, and will not justify a separate classification. We are unable to concur in this reasoning, or to limit the power of the Legislature by the distinctions expressed. Having the power, in the interests of the public health, to regulate the conditions upon which coal mining may be conducted, it cannot be limited by moments of time and differences of situation. The legislative judgment may be determined by all the conditions and their influence. The conditions to which a miner passes, or returns from, are very different from those

which an employee at work above ground passes to or returns from, and the conditions and actual servive in the cases are very different, and it cannot be judicially said that a judgment which makes such difference a basis of classification is arbitrarily exercised. Certainly not in use of the wide discretion this Court has recognized, and necessarily has recognized, in the Legislature, to classify its objects."

This reasoning of the court readily disposes of the contention of plaintiff that Section 18 discriminates between the men employed on top of the ground and those employed underneath; and we might remark, in passing, that that, in itself, is a question of hazard, under the plaintiff's own contention.

The Legislature of the State of Indiana (Acts 1907, p. 334) enacted what is commonly known and designated as the "Wide Entry Law," and provided that it should be "unlawful for any owner, lessee, agent, or operator of any coal mine within the State of Indiana, to make, dig, construct, or cause to be made, dug, or constructed, any entry, or trackway, after the taking effect of this Act, in any coal mine in the State of Indiana, where drivers are required to drive, or man a car, or cars, unless there shall be a space provided on one, or both sides, continuously of any track, or tracks, measured from the rail, in any such entry, of at least two feet in width, free from any props, loose slate, debris, or other obstruction, so that the driver may get away from the car, or cars, and track, in event of collision, wreck or other accidents," etc.

The statute made an additional classification as between

particular veins of coal, and provided that "the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal fields of Indiana, shall be exempt from the provisions of this Act."

The validity of the above mentioned statute was attacked in the Supreme Court of Indiana, in the case of State v. Barrett, 172 Ind. 169, where one Barrett claimed that the Act was unconstitutional by reason of being class legislation, upheld the Act, and in passing (on p. 178) said:

> "The statute makes the distinction, or exemption, apply to block mining only, so that the Act applies to all bituminous fields alike. Is it, then, an arbitrary or capricious classification to require conformity to the Act by the bituminous operators, and not by the block coal operators? The rule of equal protection of the law only requires that persons similarly situated shall be treated alike, or that the law shall be applicable alike to all who are in the same class. Equal protection of the law in each particular case means such an exercise of the powers of government as the settled maxims of the law permit and sanction, and under such safeguard for the protection of individual rights, as those maxims prescribe for the class of cases to which the one being dealt with belongs."

And again, on page 180, in the same opinion, the Court says:

> "Employments differ as to hazard. Each has its separate dangers, which must be guarded against in an appropriate way. To classify legislation by distinctions that naturally adhere in the subject matter

is not to indulge in class legislation. A law is general and uniform if all persons in the same circumstances are treated alike. The provisions with respect to the operation of mines in the various States, for the protection of health, life and limb, are extensive and varied, and yet their constitutionality is scarcely questioned. Another familiar example is that of fire escapes and fire appliances upon hotels, theaters and other buildings above certain heights, in which people congregate, or labor, and in the requirements for guarding machines. The classifications of cities by population, for the purpose of different local self-government, though the difference may consist only in a few less than the classification, is upheld. It results that the Act is constitutional, the affidavit is good, and the appellee's answer was not good for failing to bring himself within the exemption of the proviso."

This same case was transferred, upon Writ of Error, to the Supreme Court of the United States, and the judgment of the Indiana Supreme Court was affirmed, in the case of Barrett v. State of Indiana, 229 U. S. 26, and the Court, on p. 229, used the following language:

"That the mining of coal is a dangerous business, and therefore, subject to regulation is also well settled. It is an occupation carried on at varying depths, beneath the surface of the earth, amid surroundings entailing danger to life and limb, and has been, as it may be, the subject of regulation in the coal mining states, by statutes which seek to secure

the safety of those thus employed. The Legislature, in fact, the judge of the means necessary, and proper to that end, and only such regulations as are palpably arbitrary can be set aside because of the requirements of due process of law, under the Federal Constitution. When such regulations have a reasonable relation to the subject matter, and are not arbitrary and oppressive, it is not for the courts to say that they are beyond the exercise of the legitimate powers of legislation."

On p. 30, the same court, in the same opinion, quoted with approval, the reasoning of the Indiana Supreme Court in the same case, which quotation is as follows:

"It is not unlikely that there is, in fact, a difference in the degree of danger in mining the two kinds of coal. We, at least, cannot say to the contrary. If so, it must be presumed that the Legislature informed itself upon that subject. It may be that mining coal at a distance of 165 feet from the surface is more hazardous than mining it at 90 feet. These matters, with the relative output, the relative number of mines, and persons employed, may have entered into the consideration as requiring the Act in one case and not in the other, and while a relative number of employees, mines, and the output, might not be a proper classification if applied to parties in the same class of work, or under the same conditions, we cannot say that they are not different at different depths, and different kinds of coal, and must presume that they are. At least we cannot say that as applied

to all persons alike employed in mining bituminous coal, the Act is invalid because not applicable to block coal mining, and we cannot say that the Act is unreasonable, or determine as to its propriety, or impropriety, as, to doubt its constitutionality is to resolve in favor of its constitutionality."

The State of Montana singled out the coal industry and enacted a peculiar compensation insurance law applicable to the coal industry of that State, and the Supreme Court of the State held that because the employee could collect his insurance, and also sue and collect doubly, that particular kind of legislation was unconstitutional, and distinguished the Washington and Maryland laws, for the reason that the employee, under those laws, had his right of action in a negligence case abolished. The territorial Legislature of Alaska enacted a compulsory compensation law that applied only to the mining industry, and that Act was upheld in the case of Johnson v. Kennecott Copper Corporation, 248 Federal 407.

The Legislature of Maryland enacted a peculiar law governing compensation being paid, and limited the operation of the law to the mining industry in two counties, and to only two counties in the State. The validity of this law was attacked as being in contravention of the Fourteenth Amendment of the Constitution of the United States, and the law was sustained in the following cases:

American Coal Co. v. Alleghany, 98 At. 143;
Solzuca v. Ryan & Reilly Co., 101 At. 711.

After the decision in the case of Ives v. South Buffalo

R. R. Co., 200 N. Y. 271, the New York Legislature enacted a compulsory compensation law, the validity of which was attacked upon the grounds set out in plaintiff's Bill in the case at bar, and in dealing with the question of classification under the equal protection clause of the Fourteenth Amendment, Mr. Justice Pitney, in the case of N. Y. Cent. R. R. Co. v. White, 243 U. S. 188, delivered the opinion for the Court, in upholding the New York Act, and on p. 208, said:

> "The objection under the equal protection clause is not pressed. The only apparent basis for it is in the exclusion of farm laborers and domestic servants from the scheme. But manifestly this cannot be judicially declared to be an arbitrary classification, since it reasonably may be considered, for the risks inherent in these occupations are exceptional, patent, simple and familiar."

The State of Iowa enacted an elective compensation law, and its validity was attacked in the case of Hawkins v. Bleakley, et al., 243 U. S. 210, and in dealing with the peculiar features of that law Mr. Justice Pitney again, on p. 218, used the following language:

> "We cannot say that there is here arbitrary classification within the inhibition of the equal protection clause of the Fourteenth Amendment. All employers are treated alike, and so are all employees, and if there be some differences between employer and employee, respecting the inducements that are held out for accepting the compensation feature of the Act, it goes no further than to say that if neither

party is willing to accept them, the employers' liability shall not be subject to either of the several defenses referred to."

Again, the State of Washington, through its Legislature, enacted a compulsory compensation law, and the validity of that Act was questioned in the Supreme Court of the United States, and it was upheld in the case of Mountain Timber Co. v. State of Washington, 243 U. S. 219; and then, dealing with the subject of complaint in the case at bar, where plaintiff complains that it will be caused to pay out the sum of twenty-five thousand dollars for cases that do not arise out of any fault or negligence on its part, during the year 1919, and be compelled to pay out five thousand dollars in expenses and attorneys fees, and applying the reasoning of plaintiff's brief, we respectfully call the attention of the Court to the language of Mr. Justice Pitney in rendering the majority opinion for the court, found on p. 235, in which he says:

"The only serious question is that which is raised under the due process of law, and equal protection clauses of the Fourteenth Amendment. It is contended that since the Act unconditionally requires employers in the enumerated occupations, to make payment to a fund for the benefit of employees, without regard to any wrongful act of the employer, he is deprived of his property, and of his liberty to acquire property, without compensation, and without due process of law. It is pointed out that the occupations covered include many that are private in their

character, as well as others that are subject to regulations as public employments, and it is argued that with respect to private occupations, including those of plaintiff in error, a compulsory compensation act does not concern the interests of the public generally, but only the particular interests of the employe, and is unduly oppressive upon employers, and arbitrarily interferes with and restricts the management of private business operations."

And, continuing on p. 236, Judge Pitney says:

"If the legislation could be regarded merely as substituting one form of employers' liability for another, the points raised against it would be answered sufficiently, in our opinion, in N. Y. Cent. R. R. Co. v. White, where it is pointed out that the common law rule confining the employers' liability to cases of negligence on his part, or on the part of others, for whose conduct he is made answerable, the immunity from responsibility to an employee for the negligence of a fellow employee, and the defenses of contributory negligence and assumed risk, are rules of law that are not beyond alteration by legislation in the public interest; that the employer has no vested interest in them nor any constitutional right to insist that they shall remain unchanged for his benefit; and that the States are not prevented by the Fourteenth Amendment while relieving employers from liability for damages measured by common law standards and payable in cases where they or others for whose conduct they are answerable are found to be at fault,

from requiring them to contribute reasonable amounts and according to a reasonable and definite scale by way of compensation for the loss of earning power arising from accidental injuries to their employees, irrespective of the question of negligence, instead of leaving the entire loss to rest where it may chance to fall, that is, upon particular injured employees and their dependents."

And, continuing on p. 238, Mr. Justice Pitney says:

"The authority of the State to enact such laws as reasonably are deemed to be necessary to promote the health, safety and general welfare of their people, carries with it a wide range of judgment and discretion as to what matters are of sufficient general importance to be subject to State legislation and administration. The police power of a state is as broad and plenary as its taxing power."

Kidd v. Pearson, 128 U. S. 1.

The State of Texas, through its Legislature, enacted a workmen's compensation act, regulating the rights and liabilities of employers and employees, respecting disabling and fatal injuries in employment, and was made expressly inapplicable to domestic servants, farm laborers, common carrier railway employes, laborers in cotton gins and employers employing not more than five persons. It will be seen that one of the particular objections, when the validity of this law was questioned, was that railroad employees were exempted under the provisions of the Texas Act, as

plaintiff is complaining in the case at bar, that railroad employes engaged in train service, are exempted under the provisions of the Indiana Workmen's Compensation Act. When this case came before the Supreme Court of the United States, when attacked by an objecting employee, the sole question was whether the Act was in conflict with the due process and equal protection provisions of the Fourteenth Amendment, and on p. 157, in the opinion, Mr. Justice Pitney, in speaking for the court, used the following language:

> "There is a strong presumption that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems made manifest by experience, and that its discriminations are based upon adequate grounds. The equal protection clause does not require that State laws shall cover the entire field of proper legislation in a single enactment. If one entertains the view that the Act might as well have been extended to other classes of employment, this would not amount to a constitutional objection. The burden being upon him who attacks a law for unconstitutionality, the courts need not be ingenious in searching for grounds of distinction to sustain a classification that may be subjected to criticism. But in this case adequate grounds are easily discerned. As to the exclusion of railway employees, the existence of the Federal Laborers Liability Act, of April 22, 1908, Chapter 149, 35 Stat. 65, applying exclusively as to employees of common carriers by rail, injured while employed in interstate commerce, establishing liabil-

> ity for negligence, and exempting from liability in the absence of negligence, in all cases within its reach, and the difficulty that so often arises in determining, in particular instances, whether the employee was employed in interstate commerce at the time of the injury, reasonably may have led the Legislature to the view that it would be unwise to attempt to apply the new system to railroad employees in whatever kind of commerce employed, and that that may better be left to common law action, with statutory modifications, already in force."

In passing we would remark that at the time that the Federal Workmen's Compensation Law was enacted, in March, 1919, the railroads were being operated by the United States Railroad Administration, in addition to the reasons cited in the Texas case, by Mr. Justice Pitney.

The evidence, uncontradicted, as shown by the Transcript of the Record, was that only 10 per cent of the coal operators had come under the compensation law, prior to 1919, and that 90 per cent of the coal operators had rejected the Act. (See evidence of Samuel R. Artman, on p. 101 of Transcript.)

We, also, in passing, wish to cite from Howe S. Landers' testimony, set out on p. 71 of the Transcript, and quote the following language from his testimony:

> "That the injuries to men engaged in the storage and warehouse business are, as a rule, minor injuries; that the injuries to employes engaged in the coal mining business are, as a rule, severe; that the injuries to persons engaged in the coal mining business as to

disfigurement, and marring the appearance of the employees, are very severe; that the reports of employees injured in the coal mining business show a greater per cent of disfigurements and marring of the appearance of the persons, on the head and face, than any other industry in the state."

Again we wish to call the attention of the Court to the testimony of Samuel R. Artman, found on p. 95 of the Transcript, which reads as follows:

"In dealing with coal mining injuries there are three classes that stand out very prominently, that are very severe, burns, to the face, injuries to the back and spine, and injuries to the sacro ilial regions; that burns about the face, in the coal mining industry, are the most severe of any industry in the State, and that injuries to the back and sacro ilial regions are confined largely to the coal mining industry, and are peculiar to it, and are very severe; that disfigurements in the coal mining business are frequent."

And, again, Samuel R. Artman's testimony, on p. 101 of the Transcript, as follows:

"That in the reports made to the Inspection Department of the Industrial Board, for the year ending September 30, 1918, there were included 114 fatalities in the coal mining business; whereas, in the reports made to the Industrial Board, only 70 fatalities are shown."

"That the evidence heretofore introduced in this case shows that in the report made to the Industrial

Board of Indiana, for the year ending September 30, 1918, the total injuries to persons engaged in the coal mining business numbered 2,162; whereas, in the reports to the Mine Inspection Department, the total number of employees injured is given as 1,591; that the figure of 2,162, for total injuries, reported directly to the Industrial Board, approximately and substantially include the total figure of 1,591 to the Mine Inspection Department.

"Witness testified that there were 10 per cent. of the coal operators that came under the Compensation Law prior to 1919; that the compensation cases which were passed upon were restricted wholly to those injuries which occurred at the mines of operators who came under the law; that the questions passed upon by the witness, as a member of the Board, do not include any question of negligence. As to the other 90 per cent. of the coal operators, he had no occasion to hear any evidence with reference to injuries, or what caused them; that witness gave no figures as to the percentage of injuries in the coal mining business which were caused by negligence, but that the figures given applied to all industries.

"Note:—That only 10 per cent. of the accidents in Indiana in all business were the result of actionable negligence."

In passing, and applying the reasoning of Mr. Justice Pitney, our Legislature, being elected by the people and knowing the needs of the people, is presumed to take into consideration the reason why Section 18 of the Amended Act should apply to the coal industry.

Here was an industry where 90 per cent. of the operators had refused to avail themselves of the provisions of the elective act, an industry in which, according to the testimony of Mr. Landers and Judge Artman, the injuries were usually severe in character, and which had produced 114 fatalities, might be a basis for the Legislature in bringing the coal mining business under the provisions of the Workmen's Compensation Law compulsorily.

The State of Arizona has, perhaps, as varied a system of liabilities and compensation as any State in the Union, and this system was brought in review before the Supreme Court of the United States.

Under the laws of Arizona an employee who is injured in the couse of his employment has open to him three avenues of redress, any one of which he may pursue according to the facts of his case. They are (1) the common law liability, relieved of the fellow servant's defense, and which the defenses of contributory negligence and assumption of the risk are questions to be left to the jury; that (2) employers' liability law, which applies to a hazardous occupation, where the injury or death is not caused by his own negligence; (3) compulsory compensation law applicable to equally dangerous occupations, by which he may recover compensation without fault upon the part of the employer.

And the Supreme Court of the United States, in the case of Arizona Employers' Liability Cases, 250 U. S. 400, upheld the system in Arizona, as a valid exercise of the police power of that State.

The Supreme Court, in defining what constitutes the test of the validity of an act, as to whether it is in contravention of the Fourteenth Amendment, in the case of

Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, Justice VanDevanter, on p. 78, used the following language:

> "The rules by which this contention must be tested, as is shown by repeated decisions of the Court, are these:
>
> "1. The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify, in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done, only when it is without any reasonable basis, and, therefore, is purely arbitrary."
>
> "2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because, in practice, it results in some equality.
>
> "3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> "4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

One of the latest exercises, by the General Assembly of the State of Indiana, of the police power, was in the enactment of the State-Wide Prohibition Law (Acts 1917, Chap. 4). The validity of this law was attacked, and

among the grounds of attack were that it was unconstitutional, as being class legislation, in that it discriminated in favor of certain registered pharmacists. The Indiana Supreme Court, in Schmidt v. F. W. Cook Brewing Co., 120 N. E. 19, decided the law to be constitutional, and on p. 23, the Court said:

> "It is next insisted that the Act is void because it gives the right to registered pharmacists to deal in intoxicants, under certain restrictions, and because those who have liquors manufactured in the State, which are in bond, may have possession and tax pay, and dispose of such liquors outside of the State, while all others must get rid of the intoxicants which they have on hand, within ten days' time after the law goes into effect.
>
> "The privileges and immunities sections of our Constitution, the class section, and the general law section, are not violated, if an act is reasonably designed to protect the health, morals, or welfare of the public. The Legislature must classify, in nearly every act which it passes, to protect society. To hold that it may not would be to overthrow nearly all the laws that are now made for the public welfare. If the Legislature thought that this law could be better enforced by compelling a person to remove liquor from the State, except those having liquors manufactured in the State, and in bond, it had a perfect right to do so. It is not for this Court to try to expel legislative wisdom on the question of expediency."

It has always been the policy of the Federal Courts, in matters involving the validity of State statutes, respecting State Constitutions, to leave such matters for determination, with the State tribunals; and, in the case of L. & N. R. R. Co. 1. Garrett, 231 U. S. 298, in deciding a case involving the constitutionality of a Kentucky statute, on p. 305, Mr. Justice Hughes used the following language:

> "So far as we are advised the Court of Appeals of Kentucky has not passed upon the validity of the act in question; and this Court has often expressed its reluctance to adjudge a State statute to be in conflict with the Constitution of the State before that question has been considered by the tribunals to which it properly belongs, unless the case imperatively demands such a decision.
>
> Pelton v. National Bank, 101 U. S. 143;
> Michigan Cent. R. R. Co. v. Powers, 201 U. S. 245.
>
> "Here the argument against the statute is not of that compelling character."

So, in line with the policy of the Indiana Supreme Court we insist that there is no imperative necessity, and the argument of Appellant is not of such a compelling character as to warrant this Court in deciding Section 18 of the Amended Act to be unconstitutional and in violation of any provision of the Indiana State Constitution.

The Workmen's Compensation Act of Alaska (Laws 1915, C. 71) applied only to mining concerns employing five (5) or more persons and was attacked on the ground that

it was class legislation, and the case was heard in the District Court of the United States for the Third Division of the Territory of Alaska, and afterwards in the Circuit Court of Appeals, Ninth Circuit, before Circuit Judges Gilbert and Hunt, and Judge Wolverton of the District Court, who was speaking for the Court, applied the doctrine of Barbier v. Connelly, 113 U. S. 27, and Lindley v. Natural Carbonic Gas Co., 220 U. S. 61, and said:

> "The law is assailed by the first objection on the ground that it is thought to be class legislation, and this because the Legislature has selected but one class, namely, mining concerns employing five (5) or more persons in the work. This pertains again to the equal protection of the laws clause of the Fourteenth Amendment. Classification of subjects for regulation by law is a function belonging to the legislative department of government. Generally speaking class legislation is prohibited, but legislation which is limited in its application, if the sphere of its operation affects alike all persons similarly situated is not within the prohibition. The Legislature possesses a wide scope of discretion in the exercise of its function of classification, and such legislation can be condemned as vicious only when it is without any reasonable basis, and therefore purely arbitrary; and when legislative classification is called in question, if any state of facts can be reasonably conceived that will sustain the law, the existence of that state of facts at the time it was enacted must be assumed."
>
> Johnston v. Kennecott Copper Corporation, 248 Federal 407.

ARGUMENT.

FACTS SHOWN BY THE EVIDENCE.

It is the contention of the defendants that plaintiff has failed to show a state of facts that would justify the Court in declaring Amended Section 18 as being unconstitutional, and in conflict with the Fourteenth Amendment to the Constitution of the United States, or in conflict with either Sections 21 or 23 of the Indiana Bill of Rights; and that from the evidence itself, and applying the doctrine of the case of Lindsley v. Natural Carbonic Gas Co., we insist that there are many reasons that can reasonably be conceived, that would sustain it, and that plaintiff has failed to produce sufficient evidence to justify the Court in declaring that the section in question does not rest upon any reasonable basis.

Practically every one of the forty compensation laws that have been enacted by the several Legislatures have classified certain occupations, have exempted some, brought in others, and practically without exception each of these laws has been held to be constitutional.

NUMBER OF WORKMEN AFFECTED.

Plaintiff makes the point that Samuel R. Artman testified that only one out of seventeen accidents happened in coal mines during the year 1918, according to the statistics introduced in evidence.

We wish to call the Court's attention to the fact that the plaintiff has only chosen sixteen out of two hundred and thirty-three industries in the State as the basis for

its comparison. (See Table 125, p. 71, Transcript of Record.)

A very salient and striking bit of evidence was developed in the cross examination of one Howe S. Landers. He testified that he was formerly Secretary of the Industrial Board of Indiana, and was familiar with the Year Book of Indiana, so far as the statistics from the Industrial Board were concerned, which Year Book was prepared under his supervision and direction, excepting those statistics relating to the Inspection Department.

When the General Assembly of Indiana convened in 1919, the coal industry, a basic industry, which, in 1918, had produced 28,795,682 tons of coal and employed 27,032 men, had suffered 114 fatalities, with a death rate of 4.08 per 1,000 (see Table 180, p. 94, Transcript of Record) and was the only industry that, in the main, had refused to accept the provisions of the then elective Workmen's Compensation Law.

We quote from the testimony of Mr. Landers (p. 70, Transcript of Record):

> "That witness has not made any computation from the official record that would assume to show the gross number of employees, and the gross number of accidents within the several particular industrial occupations; that this information could only be compiled after a long and laborious amount of work; that witness did not go into the relative degree of disability at all; that in compiling the data on the coal mining industry, witness included the gross number of employees reported to the License Department, including those working above ground, as well as un-

der the ground; that the great majority of employers of labor in Indiana, other than the coal mining business, have elected to operate under the Compensation Law."

Thus, of all the two hundred and thirty-three industries in the State, the majority had accepted the law, and about 90 per cent. of the coal operators had rejected it.

The Legislature is now condemned by the Appellant for using its police power sparingly, and because it only made compensation compulsory to the one class that in the main had rejected the Act, a class that was engaged in an inherently peculiar business, and who had singled themselves out by refusing to pay compensation and who were operating under an archaic common law and liability system.

The coal industry, more than any other industry, has, from time to time, been the subject, by legislation, of certain restrictions, on account of the peculiarities inherent in the business, and because of its hazardous nature.

The Legislature, in 1911 (Burns' R. S. 1914, Sec. 8624-a), among other things, said, "The business of mining coal is hereby declared a dangerous occupation, industry and business."

The primary object of Workmen's Compensation Laws is, first of all, to prevent industrial accidents. When an industry has to pay compensation in virtually every accident, its insurance rates are increased, and, by the inauguration of safety devices for the prevention of accidents, insurance carriers reduce insurance premiums. The Legislature evidently believed a Workmen's Compensation Law would lessen industrial accidents.

We wish to call the attention of the Court to the wording of the title of the Indiana Workmen's Compensation Law (Chap. 106, Acts 1915): "An Act to Promote Prevention of Industrial Accidents," etc.

Under Section 52 of said Act, set out in Appellant's brief (p. 81), it will be observed that "By virtue of the Compensation Law the rights, powers and duties conferred by law upon the State Bureau of Inspection, are hereby continued in full force, and are hereby transferred to the Industrial Board."

The law also provided that the Deputy Inspectors appointed by the Governor as Deputy Inspectors, in the State Bureau of Inspection, to-wit, Inspector of Buildings, Factories and Work Shops, Boilers, and Inspector of Mines and Mining, were transferred to the jurisdiction of the Industrial Board.

DISMEMBERMENTS.

Appellant complains because, according to the figures it introduced in evidence, coal mining stands fifth in the percentage of dismemberments to the number of employes.

We submit that the table shown on p. 24 of Appellant's brief does not disclose the severity or the character of these dismemberments. Figures are only submitted of five industries out of the 233 industries of the State, as set out in Table 125, pp. 71, 72, 73, 74, 75, 76, 77, 78 and 79 of the Transcript of Record.

TOTAL NUMBER OF ACCIDENTS.

We insist that the most serious kind of accidents are fatal accidents. These are the accidents that not only

concern employee and employer, but society at large. It ought to be the concern, and is, of every citizen of the State of Indiana, and if the Legislature believed it to be the policy of wisdom to single out the coal industry, as it has done on many occasions, and make a compensation law compulsory as to it, as a class, it had the right to do so, and it is a legislative, and not a judicial, question.

DEATH RATE.

Appellant claims that the death rate in coal mining in Indiana, during the year 1918, was abnormal. Is that not, in itself, a justification for the Legislature exercising its police power?

We herewith set out the Table of Accidents, No. 3, p. 94, of Transcript of Record, as follows:

179 "Table of Accidents No. 3.

Table showing number of tons of coal produced, number of persons employed, the number of fatalities, the number of tons produced per fatality, and the number of killed per thousand employed, for each year from 1898 to 1918, inclusive.

Years.	Tons.	Produced.	Employed.	Tons per fatality.	Killed per 1,000 employed.
1898.....	5,146,920	No report	22	233,950	.....
1899.....	5,864,975	7,366	15	390,997	2.04
1900.....	6,283,033	8,868	18	349,059	2.03
1901.....	7,019,283	10,206	24	292,466	2.33
1902.....	8,762,197	13,139	34	265,133	1.83
1903.....	9,992,563	15,128	15	181,683	.99
1904.....	9,872,404	17,838	34	290,364	1.91
1905.....	10,995,972	17,856	47	233,956	2.63
1906.....	11,422,027	19,562	31	368,450	1.60
1907.....	13,250,715	19,009	53	250,013	2.79
1908.....	11,997,304	19,092	45	266,606	2.36
1909.....	13,692,089	18,908	50	273,841	2.64
1910.....	18,125,244	21,171	51	355,397	2.41
180.					
*1911.....	9,571,289	20,778	33	290,039	1.60
1912.....	14,204,578	21,220	37	383,908	1.74
1913.....	17,246,565	21,693	59	292,315	2.72
1914.....	16,635,178	22,110	49	339,493	2.21
1915.....	15,696,921	20,702	54	284,202	2.60
1916.....	18,238,591	21,300	48	379,969	2.25
1917.....	24,013,021	23,940	66	363,834	2.75
1918.....	28,795,682	27,032	114	292,067	4.08

*1911 report for nine (9) months only.

An examination of this Table, alone, would justify the Legislature in exercising its police power in singling out the coal industry.

Beginning in 1898 there were 22 fatalities, and these fatalities had steadily increased until, when the Legislature

convened in 1919, statistics available to it showed that they had mounted to the appalling number of 114.

We also wish to submit Table No. 1 (p. 91, Transcript of Record), setting out United States Government statistics compiled by the Bureau of Mines, which Table is as follows:

"TABLE I.

"Estimate of Fatal Industrial Accident in the United State in 1913 by Industry Groups.

"(The fatality rates used in this estimate are approximations. They are slightly at variance with the exact rates for certain industries, particularly mining, for the year 1913. For metal mines in 1913 the fatality rate, according to the Bureau of Mines, was 3.54 per 1,000; for coal mines, 3.73; for quarries, 1.72. In the estimate it is assumed that for these industries in particular the approximate rates indicate more accurately the average risk for a period of years, it being considered that even the official rates fall short of absolute accuracy and completeness in the absence of a Federal law making the reporting of mine accidents compulsory upon all operators. The estimate was arrived at before Technical Paper 94 of the Bureau of Mines was published.)

Industry group. Males.	Number. employees.*	Fatal industrial accidents.*	Rate per 1,000.
Metal Mining	170,000	680	4.00
173 Coal Mining	750,000	2,625	3.50
Fisheries	150,000	450	3.00
Navigation	150,000	450	3.00
Railroad employes	1,750,000	4,200	2.40
Electricians (light and power)	68,000	153	2.25
Navy and marine corps	62,000	115	1.85
Quarrying	150,000	255	1.70
Lumber industry	531,000	797	1.50
Soldiers, United States Army	73,000	109	1.49
Building and construction	1,500,000	1,875	1.25
Draymen, teamsters, etc.	686,000	686	1.00
Telephone and telegraph (Including linemen)	245,000	123	.50
Agricultural pursuits, including forestry and animal husbandry	12,000,000	4,200	.35
Street railway employes	320,000	320	1.00
Watchmen, policemen, firemen	200,000	150	.75
174 Manufacturing (general)	7,277,000	1,819	.25
All other occupied males	4,678,000	3,508	.75
All occupied males	30,760,000	22,515	.73
All occupied females	7,200,000	540	.075

*Partly estimated.

These statistics show that only one class of work is more hazardous, in point of fatalities, than coal mining, and that is metal mining. The record does not disclose any evidence of a metal mine in Indiana.

These statistics were available to the Legislature, and might have been used as a justification for its action.

On pp. 24 and 25 of Appellant's brief, Appellant has claimed that the ratio of total accident to the number of employees of certain selected classes, coal mining stands twelfth in the list. We have taken these similar classes of occupations and have given the number of fatalities per class, which disclosed the following:

FATALITIES.

General contractors	21
Gas manufacturing	None
Transfer, storage and warehouse	2
Oil refining	1
Stone quarrying and cutting	2
Glass manufacturing	4
Iron and steel	46
Veneer manufacturing	None
Cement manufacturing	None
Furniture manufacturing	None
Explosives	None
Total deaths	76

(See pp. 95, 96 and 97 of Transcript of Record.)

This same year, ending October 1, 1918, shows coal mining, 114 deaths.

The number of employees engaged in the above named businesses (see p. 69, Transcript of Record) is as follows:

Transfer, storage and warehouse	604
General contracting	5,357
Gas manufacturing	2,508
Iron and steel	27,720
Oil refining	5,129
Glass manufacturing	8,377
Stone quarrying and cutting	2,315
Iron, steel and allied industries, including metal finishers, saw manufacturing, stove manufac-	

ing, foundry castings and forgings	59,516
Veneer manufacturing	1,279
Cement manufacturing	2,037
Furniture manufacturing and repairs	11,158
Manufacturing of explosives	817
Total	126,817 employees,

producing 76 deaths.

Whether there is a repetition in the addition of the employees of the iron and steel industry, we are unable to say, but deducting 27,720, from 126,817 employees, still leaves 99,097 employees, out of which there occurred 76 deaths.

In the same Table (p. 69, Transcript of Record), among 26,877 coal miners, there were 114 deaths.

Appellant states in its brief, "The undisputed evidence shows that this unusual death rate cannot continue."

Taking the same Table (p. 94, Transcript of Record), in the year 1913 there were 21,683 men employed in the coal industry of Indiana, out of which 59 men suffered death. This was before the world war. Our answer is that the undisputed evidence shows that for more than twenty years the death rate in the coal industry has been more than in any other industry in the State.

Cannot the State of Indiana, exercising its police power, provide a compulsory system of compensation to deal with this appalling situation? Can the Court say that it is arbitrary, oppressive and unjust? Could not the Legis-

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Appellant states in its brief, "The undisputed evidence shows that this unusual death rate cannot continue."

Taking the same Table (p. 94, Transcript of Record), in the year 1913 there were 21,683 men employed in the coal industry of Indiana, out of which 59 men suffered death. This was before the world war. Our answer is that the undisputed evidence shows that for more than twenty years the death rate in the coal industry has been more than in any other industry in the State.

Cannot the State of Indiana, exercising its police power, provide a compulsory system of compensation to deal with this appalling situation? Can the Court say that it is arbitrary, oppressive and unjust? Could not the Legis-

lature know of the expenses and uncertainties of liability litigation, and the vexatious delays and appeals which were a matter of common knowledge, and enact a compulsory compensation law applying it to the coal industry, in order to more properly care for the dependents of deceased coal miners? Could not the Legislature transfer a large burden from the taxpaying public and place it where it properly belongs?

CHARACTER OF INJURIES.

Appellant attempts to make the point that as the State has a very comprehensive system of mining statutes, and assumes that the several persons, firms and corporations are presumed to obey them, the character of the injuries are not sufficient to justify the Legislature in the enactment of a compulsory compensation law.

Did the Lower Vein Coal Company come into Court with clean hands?

Did it comply with the law and assist the State authorities in compiling accurate statistics?

We respectfully call the attention of the Court to the testimony of Mr. Clifford Hoffman (p. 100, Transcript of Record) and Mr. Samuel R. Artman, Chairman of the Industrial Board (p. 100, Transcript of Record):

Mr. Hoffman testified that he was employed by the Indiana Coal Operators' Reciprocal Organization, which has for its purpose the inspection of mines and the investigation of accidents, and the adjustment of personal injury claims; that the mine boss, or superintendent of the mine, sends a report to this organization of accidents that occur in and around the mine; that those reports sometimes come

in a day or two, and sometimes in a week or two; that at the present time 115 or 120 mines are members of this organization; that approximately 2,500 accidents were reported to this Association, between the 1st day of June, 1918, and the last day of June, 1919; that the reciprocal organization includes a large percentage of the coal producing business, approximating 75 or 80 per cent. of the tonnage.

Mr. Hoffman also testified (p. 100, Transcript of Record) that during almost the identically same period of time, all of the coal companies of the State only reported 1,591 accidents to the Mine Inspection Department, and that all of the coal companies of the State reported to the Mine Inspection Department 900 less accidents than merely the members of the Indiana Coal Operators' Reciprocal Organization reported to their own insurance concern. In other words, the coal operators of Indiana are responsible for the statistics compiled by the Industrial Board, and which they used in evidence, and from which they ask equity.

The plaintiff, the *Lower Vein Coal Company, from September 30, 1917, to October 1, 1918, reported 12 injuries to the Industrial Board and 6 to the Mine Inspector.* The Vandalia Coal Company, during the same period, did not report any injuries to the Industrial Board; Zeller McClellan Company reported 9 to the Industrial Board and none to the Inspector of Mines; J. Woolley Coal Company did not report any to either; Shirkey Coal Company reported 31 to the Industrial Board and 2 to the Inspector of Mines; Ayrshire Coal Company reported 78 to the Industrial Board and 2 to the Inspector of Mines; Coal Bluff Mining

Company reported 6 to the Industrial Board and 1 to the Inspector of Mines; Grant Coal Company, 6 to the
198. Industrial Board, none to the Inspector of Mines; Jackson Hill Coal and Coke Company reported 162 to the Industrial Board and only 18 to the Inspector of Mines.

Judge Artman, continuing (p. 102, Transcript of Record), testified as follows:

> "I think that the actual fact is that neither one of these reports or both of them combined is or are reliable. In other words, I don't think if you take the accidents reported in both of them in the aggregate for the year 1918, for the period September 30th, 1917, to October 1st, 1918, we have over sixty-six and two-thirds per cent. of the injuries that actually occurred in the coal mines of Indiana. For instance, here is the J. Woolley Coal Company that do not report any to anybody. I think if you held an inquisition on that company you would find out facts that would justify the reports of a great many."

Also, on p. 102, Transcript of Record, Mr. Clifford Hoffman testified that the J. Woolley Coal Company reported to the Indiana Operators' Reciprocal Organization 46 accidents, substantiating the claim of Mr. Artman.

On p. 104, Transcript of Record, when Mr. Clifford Hoffman was recalled, he testified that the *plaintiff, Lower Vein Coal Company, was a subscriber and a member of the Indiana Coal Operators' Reciprocal Organization, and that from the 1st day of October, 1917, to the 1st day of October,*

1918, it reported 135 accidents to the Indiana Coal Operators' Reciprocal Organization.

And yet plaintiff, which is asking equity, reported only 12 accidents to the Industrial Board and 6 to the Mine Inspector for substantially the same period of time.

If this ratio of discrepancy was kept up it could fairly be assumed, from the evidence in this case, that in truth and in fact there occurred between four and five thousand injuries in the coal mines of Indiana, in the year ending October 1st, 1918, and a great many more than 114 deaths. Perhaps the Legislature knew this condition existed in Indiana.

The burden rests upon the plaintiff to show that the Act was unconstitutional. *The record shows that the Lower Vein Coal Company has only reported 18 accidents to the State authorities, and 135 accidents to its own private insurance concern. It was within the peculiar power of plaintiff to illuminate the District Court of the United States by facts, figures and statistics, through this same Indiana Coal Operators' Reciprocal Organization, and it has conspicuously failed so to do.*

The Lower Vein Coal Company, plaintiff in this case, did not report 117 accidents to the State authorities. It did not report but 13⅓% of the accidents that occurred in practically the same period. We inquire: Has it done equity?

On this basis we insist that the plaintiff has made no showing as to whether, under the Compensation Law, it will be required to pay more money than it would under the Liability Law. Plaintiff has failed to show what percentage of these 135 accidents occurred by reason of negligence or contributory negligence—whether the risks were

assumed or not, how much it cost the company under liability or the common law, and how much it would have cost the company under the Compensation Law. Plaintiff has failed to show that it has been harmed in any property right, and before it can ask equity it is incumbent upon it to show this by convincing evidence. The court cannot say under the evidence that the compensation law has or will cost a dollar in excess to the common law or liability laws.

NUMBER OF DEATHS.

It is the contention of plaintiff that the number of deaths does not determine the hazard of occupation, from a compensation standpoint.

Under the Compensation Law, in the event of a workman's death, his dependents receive 55 per cent. of his average weekly wage, for a period of 300 weeks, but we wish to call the attention of the Court to Section 40, quoted in Appellant's Brief (p. 76), which reads as follows:

> "Section 40. In computing compensation under the foregoing section, the average weekly wages of an employee shall be considered not more than $24, nor less than $10; and, provided further, that the total compensation payable under this Act, shall in no case exceed $5000."

In other words, the most that any employee or dependent may receive is 55 per cent. of $24, making the maximum average weekly wage $13.20 per week. The Government statistics show that coal mining is more hazardous in point of fatality than any other industry, except metal mining.

From an industrial standpoint, from the standpoint of the welfare of society, the most dangerous injury is one that produces death. Dependents cannot receive compensation in a sum more than $4,060, including $100 for funeral expenses. Under the Indiana statutes dependents may receive as high as $10,000 in death cases under the liability laws.

WAGE CONDITIONS.

On p. 33 of Appellant's Brief, there is found the following language:

> "Mr. Phil Penna, at one time President of the Miners' National Union, testified in this respect, and his evidence is not disputed, that miners have been able to earn during the last year on a very conservative basis, from $7.50 to $8.00 a day, theoretically of eight hours, but practically of six hours; that even the men who work about ground receive from $4.65 a day upward for their work. He added that thousands of miners in Indiana had paid income taxes on incomes in excess of $2,500 for the year 1918. (Transcript, p. 84.)
>
> "These facts demonstrate that the coal mining industry is the highest paid industrial work in Indiana."

We challenge the Appellant to show a scintilla of evidence in the record by which the wages in any other industry in the State have been shown. The statement is an assumption, and entirely out of the record. We think it is not relevant to the issue, as bearing upon the constitu-

tionality of Amended Section 18, as to what were the wage conditions in the coal industry in Indiana.

Appellant did not cite that part of Mr. Penna's testimony, when, upon cross examination (p. 85, Transcript of Record) he testified:

> "since the signing of the armistic about one-third of the mines have been in operation; that is, that about 33 per cent. of the potentiality has been working, until recently, and now is close to 50 per cent. Several mines have suspended operation altogether and closed down; that at the present time in the bituminous field the coal mines are operating about three days a week."

Plaintiff, in its Brief, sets out the fact that because the coal miners employ lawyers who represent them in personal injury and compensation suits, they are a favored class.

The plaintiff also says that in other industries in Indiana, where the employer has rejected the Act, the industrial worker is required to pay his own attorney.

This is another assumption of facts which is not borne out by the record. There is not a scintilla of evidence in the record showing whether or not any other class of industrial workers have attorneys regularly employed to represent them in suits of this character.

However, we wish to call the attention of the Court to the fact that plaintiff has not cited any authority in which any statute has ever been declared unconstitutional because its validity depended upon a contract between client and attorney. Such a contention is irrelevant, and in the ab-

sence of Appellant's counsel citing any such authority, we shall deem the matter as having been waived.

CONCLUSION.

In conclusion, we wish to state that the record discloses that about the only claim on the part of the plaintiff, that Section 18, as amended, is invalid, is by reason of the test of hazard, which on p. 25 of its Brief, it does not admit to be the test.

The record shows conclusively that the death rate is highest in the coal industry. The statistics which the coal operators, themselves, have provided the State authorities, show that the death rate is very much higher than in any other industry in the State of Indiana. Judge Artman has testified that the disfigurement and injury are more severe than in any other businesses.

The coal industry was practically the only great industry in Indiana that had not elected to pay compensation when the Legislature convened in 1919, and the Legislature only brought the one great basic industry under its terms that had persistently refused to accept its provisions.

The statistics that were available for plaintiff were those which had been furnished by it and the coal operators of the State that had failed to correctly report the number of injuries, and, consequently, such statistics are necessarily inaccurate, and would not justify the striking down of Amended Section 18.

The coal industry is, inherently, a peculiar business, having special and peculiar hazards inherent in the business.

Plaintiff has failed to show that it would sustain any substantial damage by reason of being brought under the Compensation Law. It has failed to show what the liability

system has or would cost it, and what it would pay out under the Compensation Law and, therefore, has not made any showing of any property damage suffered or likely to be suffered.

Counsel for Appellant, in their Briefs, have shown many citations of authority, which are remarkable in that practically every compensation law has been upheld and its classifications have been sustained by the Court. The law shows, upon its face, that both in privileges conferred and liabilities imposed every person, firm, partnership, individual and corporation in the State is treated alike, under like circumstances, and that each of the employees thereof is treated alike under like circumstances.

By reason of said facts we believe that the exercise of the police power by the State, in the enactment of the section in question, was a valid one.

We, for the purpose of assisting the Court, have compiled a sylabus of the mining laws of Indiana, for the purpose of showing to what extent the Legislature has gone in dealing with this peculiar industry, which we set out herein as "Appendix B."

Practically all of the provisions of the State mining laws have been attacked from time to time, and, as we have heretofore set out, no act of the Legislature of the State of Indiana, that related to the business of mining coal, has ever been set aside.

Respectfully submitted,
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LAWS RELATING TO COAL MINES AND MINING, IN INDIANA

APPENDIX "A."

(Acts 1905, p. 65. In force April 15, 1905.)

8569. (7429.) *"Mine" and "Operator" defined.*—1. That the term "mine" as used in this act includes the working in every shaft, slope or drift which is used, or has been used, in the mining and removing of coal from and below the surface of the ground. The term "operator," as used in this act, is hereby defined to mean any corporation, company, firm, person, proprietor, lessee, owner or occupier of any coal mine in this state or any person upon whose account the mine is operated.

8570. (7430.) *Maps of coal mines, refusal, duties of inspectors.*—2. The operator of each mine shall make, or cause to be made. an accurate map or plan of the working mines on a scale of not less than two hundred feet to one inch, showing the area mined or excavated, the arrangement of the haulage roads, air courses, break throughs, brattices, air bridges or overcasts and doors used in directing the air currents in such mine, the location and connection with such excavation of the mine of the lines of all adjoining lands with the names of the owners of such lands, so far as known, marked on the map. Such map shall show a complete working of the mine, and, when completed, shall be certified to by the owner, agent or engineer making

the survey or map to be a true and correct working of said mine. The owner or agent shall deposit with the inspector of mines a true copy of such map within thirty days after the completion of the survey of the same, the date of which shall be shown on each copy, the original map and survey to be kept at the office of such mine open for inspection of all interested persons at all reasonable times. Such map and copy thereof shall be extended each year between the first day of May and the first day of September, and shall be filed as required in making the original survey showing the exact workings of the mine at the date of the last survey. At the request of any coal mine the owner of the land, the miners working therein or other persons interested in the workings of such mine, the inspector of mines shall make, or cause to be made, an accurate map of the workings thereof, on a scale of not less than two hundred feet to the inch, showing the area mined or excavated and the location and connections of the lines of all adjoining lands therewith and the names of the owners of such lands so far as known. Such map shall be sworn to by the surveyor to be a correct map of the workings of such mine, and shall be kept on file in the office of the inspector of mines for examination at all times. All expenses shall be paid by the party causing such survey and map to be made. In case the operator of any mine shall fail or refuse to furnish a map as required by this law, it shall be the duty of the inspector of mines to appoint a competent mining engineer to make the survey and maps and file and deposit them as required by law, and for his services he shall be entitled to a reasonable fee to be paid by the party whose duty it was to make such survey and map, and shall be entitled to a lien on the mine and

machinery to the same extent as is now provided by law for other work and labor performed in and about the mines of this state. Before a mine or any part of a mine is abandoned the owner or agent shall make a survey showing the farthest extremity of the workings of such mine, and a map thereof made and filed within thirty days thereafter at the office of the county recorder in the county where such mine is located; said map shall have attached thereto the affidavit of the mining engineer making the map, and of the mine boss in charge of the underground workings of said mine. Such map shall be properly labeled and filed by the recorder and preserved as a part of the records of the land on which said mine is located, and the recorder shall receive for said filing from said owner or agent a fee of fifty cents. Upon payment of the fees, the inspector of mines shall make, within a reasonable time, and deliver to the party so demanding the same an accurate copy of any map or plan on file in his office. The original map or plan of any coal mine or the copy filed with the inspector of mines or a certified copy, issued under the hand and seal of such inspector, shall be evidence in any court of justice in this state. In order that the maps, reports and other records pertaining to the office of inspector of mines may be properly preserved, a room in the state house shall be set aside and furnished in a suitable manner as an office for said officer. (As amended Acts 1911, p. 626.)

8571. (7431.) *Number of workmen, outlet.*—3. It shall be unlawful for any operator to allow more than ten (10) persons to work in any mine at any one time after five thousand (5,000) square yards have been excavated until a second outlet shall have been made: Provided, That all

air and escape shafts sunk hereafter, shall be separated from the hoisting shaft by at least two hundred (200) feet of natural strata and shall be provided with stairways not less than two (2) feet in width, at an angle of not more than fifty (50) degrees with landings at easy and convenient distance and with guard rails attached to each set of stairs from the top to the bottom of the same, and shall be available at all times to all employes engaged in such mines: also Provided, That the stairways, landings and guard rails shall be of suitable design and strength to accomplish the purpose for which they are intended, and shall be kept free from obstructions. And that when the escape and air shafts are combined, the escape shaft and air shaft be separated by a good substantial partition from top to bottom: Provided further, Where the approach or approaches to the escape shaft crosses an air course, entry or other passageway used as an air course, either as an intake or return, the air current shall be conducted by an overcast or undercast, over or under the point where such approaches cross the air course, and that all approaches to escape shafts shall be kept free from slate, mine cars, mine tracks and other debris and shall be used only as a means of ingress or egress to or from the escape shaft. All water coming from the surface or out of any strata in such shaft shall be conducted by rings or otherwise to prevent it from falling down the shaft and wetting persons who are descending or ascending the shaft. The operator may provide at such outlet or escape a hoisting apparatus, which shall be at all times available to all persons in the mine, the same signals to be used as provided by law for use at hoisting shafts. The traveling roads or gang-ways to said outlet shall be sepa-

rated from the hoisting shaft by at least two hundred (200) feet of natural strata and not less than four (4) feet in height and four (4) feet wide and shall be kept as free from water as the average haulage roads in such mines. At all points where the passageway to the escapement shaft, or other place of exist, is intersected by other roadways or entries conspicuous boards shall be placed indicating the direction it is necessary to take in order to reach such place of exit. It shall be unlawful to erect any inflammable structure or building or powder magazine on the surface so near the escapeway as to jeopardize the safety of the workmen in case of fire. And no boiler house shall be erected nearer than thirty-five (35) feet of the mine opening. All explosive materials shall be stored in fire proof buildings on the surface located not less than three hundred (300) feet from any other building. Fans shall be located and mantained at such place as not to be directly over the opening of an air shaft or escapement shaft, and all fans hereafter installed shall be arranged so as to enable the operator, when desirable, to reverse the air current: Provided, further, That escape shafts already constructed under the provisions of the law herein amended shall not be affected by this act except they shall be maintained according to the provisions herein. (As amended, Acts 1913, p. 701.)

8572. (7432.) *Cages, safety catches, riding in.*—4. The rope used for hoisting and lowering in every mine shall be a wire rope, and it shall be securely fastened to the shaft of the drum where two separate ropes are used, and at least one whole lap shall remain on the drum when the cage is at rest on the lowest caging place in the mine, and it shall

be examined by some competent person every morning before the men descend into the mine. The operator of every mine shall provide a cover of ¼-inch boiler plate overhead on all carriages or cages used for lowering or hoisting persons into and out of the mines, and on top of every shaft an improved safety gate; also, an approved safety spring on the top of every slope. Approved safety catches shall be attached to every cage used for the purpose of hoisting or lowering persons. All persons are prohibited from riding on the cages when coal or dirt is being hoisted, and in no case shall more than six men ride on any cage or car at one time.

8573. (7433.) *Brake.*—5. An adequate brake shall be attached to every drum used for lowering or raisng persons into or out of all shafts or slopes.

7574. (7434.) *Indicator.*—6. A proper indicator shall be attached to every hoisting apparatus in addition to any mark on the rope, which shall show to the hoisting engineer the position of a cage or load in the mine.

8575. (7535.) *Fencing, lights, speaking tubes, signals.*—7. The operator of every mine shall keep the top of every mine and the entrance thereof securely fenced off by vertical or flat gates covering and protecting the mouth of such mine. Two lamps shall be kept lighted at all times when the mine is in operation, except when electric lights are used, one on each side of the shaft, not more than ten (10) feet from said shaft in each vein where men get on or off the cages. There shall be gates hung at each vein, other than the lower one, so that at all times except when coal is actually being placed on the cage or when empty cars are being taken off the cage there shall be a barrier prevent-

ing any one falling into the shaft. The operator of such mine, upon receiving notice from the inspector that one or more safety lamps are necessary to the safety of the men in such mine, shall at once procure and keep for use such number of safety lamps as may be necessary. All safety lamps used for examining mines or for working therein shall be the property of the operator and shall remain in the custody of the mine boss or other competent person, who shall clean, fill, trim, examine and deliver the same locked and in safe condition to the men when entering the mine, and shall receive the same from men at the end of their shift. Said person or persons shall be responsible for the condition and proper use of safety lamps while in their possession and the safe return of said lamps to the place from whence they received them. The operator of any mine shall provide and maintain a metal tube from the top to the bottom of the mine, suitably adapted to the free passage of sound, through which conversation may be held between persons at each vein with a signal bell at the top and bottom of each mine. There shall be a code of signals at all mines, with a signal bell at the top and bottom of each mine, one bell shall signify to hoist coal or empty cage, and also to stop either when in motion, two bells shall signify that men are coming up; when return signal is received from the engineer men will get on the cage and ring one bell to hoist; four bells shall signify to hoist slowly, implying danger. The engineer's signal for men to get on the cage shall be three bells. A whistle may be used at the top of the mine instead of a bell. A copy of the above code of signals shall be printed and conspicuously posted at the top and bottom of the shaft and in the engine room.

8576. (7436.) *Abandoned mine, fencing.*—6. The entrance of an abandoned mine shall be securely fenced off, so that no injury can arise therefrom.

8577. (7437.) *Scales, weighmen, inspection.*—9. The operator of any mine at which the miners are paid by weight shall provide suitable and accurate scales of standard manufacture for weighing of coal which may be procured from such mines; such operator shall be required to keep United States standard weights to test said scales. At every mine where the coal mined is paid for by weight it shall be the duty of the weighman and the check-weighman to examine and balance the scales each morning, and in no case shall any coal be weighed until such scales are tested by the United States standard weights and found to be correct. Said weighman shall accurately weigh and he shall, together with the check-weighman, record the weight of each miner's car of coal delivered, which record shall be kept open at all reasonable hours for inspection of all miners or other persons pecuniarily interested in the product of such mine: Provided, That if the weighman and check-weighman shall disagree work may continue until the inspector of mines can be present and any erroneous weights made during such times shall be rectified. When differences shall arise between the weighman and check-weighman, or operator, of any mine as to the correctness of the scales, the same shall be referred to the inspector of mines, whose duty it shall be to see and regulate the same at once. The inspector of mines and miners employed in the mine, the owner of the land and others personally interested in the royalty of such mine shall, at all proper times, have full right of access to and examination of scales or

apparatus used for weighing coal in or about said mine, including the bank book in which the weights of coal are kept, to determine the amount of coal mined for the purpose of attesting the accuracy thereof.

8578. (7438.) *Management of engines and cages.*—10. The operator shall not place in charge of any engine used for conveying into or hoisting out of any mine any but experienced, competent and sober engineers. The engineer in charge of such engine shall allow no person except such as may be deputed for that purpose by the owner or agent to interfere with it or any part of the machinery, and no person shall interfere, or in any way intimidate the engineer in the discharge of his duties. He shall not permit any one to loiter in the engine room and he shall hold no conversation with any officer of the company or other person while the engine is in motion, or while his attention should be occupied with the business of hoisting. A notice to this effect shall be posted on the doors of the engine house. He shall thoroughly inform himself of the established code of signals. Signals must be delivered in the engine room in a clear and unmistakable manner, and when signal is received that men are on the cage he shall speed his engine not to exceed six hundred (600) feet per minute.

8579. (7439.) *Ventilation, mine boss, currents of air, airways.*—11. The operator of any mine shall provide and maintain hereafter for every such mine a sufficient amount of ventilation, affording not less than one hundred (100) cubic feet of air per minute for each and every person employed, and three hundred (300) cubic feet per minute for each mule, horse or other animal used in said mine, measured at the foot of the downcast, and as much more as

the circumstances may require. It shall be forced and circulated around the main entries, cross entries and working places throughout the mine so that said mine shall be free from standing gas of whatsoever kind to such an extent that the entire mine shall be in a fit state at all times for men to work therein, and will render harmless all noxious or dangerous gases generated therein. Every place where fire damp is known, or supposed to exist, shall be carefully examined with a safety lamp by a competent fire boss immediately before each shift, and in making said examinations it shall be the duty of the fire boss, at each examination, to leave at the face of every place examined evidence of his presence, and it shall be unlawful for any person to enter any mine, or part of mine, generating fire damp until it has been examined by the fire boss and reported by him to be safe. The ventilation required by this act may be provided by any suitable appliance, but in case a furnace is used for ventilation purposes it shall be built in such a manner as to prevent the communication of fire to any part of the works by lining the upcast with incombustible material for a sufficient distance up from the said furnace. But in no case shall a furnace be used at the bottom of the shaft in the mine for the purpose of producing a hot upcast of air where the hoisting appliances and buildings are built directly over the shaft. The operator shall employ a competent mine boss, who shall be an experienced coal miner, and shall keep careful watch over the ventilating apparatus and the airways, and shall see that, as the miners advance their excavations, all loose coal, slate and rock overhead are taken down or carefully secured against falling therein on the traveling and airways. He shall measure the air

currents at least once a week at the inlet and outlet, and at or near the face of the entries; he shall keep a record of such measurements, which shall be entered in a book kept for that purpose, the said book to be open for inspection of the inspector of mines. He shall also on or about the first day of each month mail to the inspector a true copy of the said air measurements, stating also the number of persons employed in or about said mine, the number of mules and horses used, and the number of days worked in each month. Blanks for this purpose shall be furnished by the state to the inspector and by the inspector to each mine boss. The currents of air in mines shall be split so as to give separate currents to at least every fifty (50) persons at work, and the inspector of mines shall have discretion to order a separate current for a smaller number of men if special conditions render it necessary. Whenever the inspector of mines shall find men working without sufficient air or under any unsafe conditions he shall first give the operator a notice giving the facts and reasonable time to rectify the same, and upon his failure to do so he may order the men out of the mine or portion of said mine and at once order said mine, or part thereof, stopped until such mine or part of mine shall be put in proper condition. And the inspector of mines shall immediately bring suit against such operator for failure to comply with the provisions of this section. "Break throughs" or airways shall be made in each room and entry at least every forty-five feet. All "break throughs" or airways, except those last made near the working faces of the mine, shall be closed up and made air tight. The doors used in assisting or directing the ventilation of the mine when coal is being hauled through them, shall be opened and closed by persons designated to

do the same, so that the drivers or other persons may not cause the doors to stand open, but nothing herein shall prevent the use of automatic or mechanical doors, subject to the approval of the inspector of mines. In case the roadways or entries of any mine are so dry that the air becomes charged with dust, such roadways or entries shall be regularly and thoroughly sprinkled. And it shall be the duty of the inspector to see that this provision is carried out.

8580. (7440.) *Examinations by mine boss, duties, accident.*—12. The mine boss shall visit and examine every working place in the mine, at least every alternate day while the miners of such places are, or should be, at work, and shall examine and see that each and every working place is properly secured by timbering and that the safety of the mine is assured. He shall see that a sufficient supply of timbers are always on hand at the miners' working place. He shall also see that all loose coal, slate and rock overhead wherein miners have to travel to and from their work, are taken down or carefully secured. Whenever such mine boss shall have an unsafe place reported to him, he shall order and direct that the same be placed in a safe condition; and until such is done no person shall enter such place except for the purpose of making it safe. Whenever any person working in said mine shall learn of such unsafe place he shall at once notify the mine boss thereof and it shall be the duty of said mine boss to give him, properly filled out, an acknowledgment of such notice of the following form:

I hereby acknowledge receipt of notice from .....
of the unsafe condition of the mines as follows: .....
Dated this ..... day of ....., 19....

....., Mine Boss.

The possession by the person of such written acknowledgment shall be proof of the receipt of such notice by said mine boss whenever such question shall arise; and upon receipt of such notice said mine boss shall at once inspect such place and proceed to put the same in good and safe condition. As soon as such unsafe place has been repaired to the approval of said mine boss, he shall then give permission for the men to return to work therein, but no person shall return to work until such repairs have been made and permission given. Whenever any accident whatsoever has occurred in any mine which shall delay the ordinary and usual workings of such mine for twenty-four consecutive hours, or has resulted in such injury to any person as to cause death or require the attendance of a physician or surgeon, it shall be the duty of the person in charge of such mine to notify the inspector of mines of such accident without delay and it shall be the duty of said inspector to investigate and ascertain the cause of such accident as soon as his official duties will permit: Provided, That if loss of life shall occur by reason of any such accident said inspector shall immediately, with the coroner of the county in which such accident may have occurred, go to the scene of the accident. They shall investigate and ascertain the cause of such loss of life and have power to compel the attendance of witnesses and administer oaths or affirmations to them and the costs of such investigations shall be paid by the county in which the accident occurred, as costs of coroner's inquests are now paid.

8581. (7441.) *Traveling way, outlet, provisions for injured.*—13. There shall be cut out at the bottom of the shaft a traveling way sufficiently high and wide to enable

persons to pass the same in going from one side to the other, without passing over or under the cage. On all single track hauling roads wherever hauling is done by power, and on all gravity or incline planes in mines, upon which the persons employed in the mine must travel on foot to and from their work, places of refuge must be provided in the side wall, not less than three (3) feet in depth, measuring from side of car, and four (4) feet wide, and not more than twenty (20) yards apart, unless there is a clear space of at least three (3) feet between the side of the car and the side of the wall, which space shall be deemed sufficient for the safe passage of men. On all hauling roads in which the hauling is done by draft animals, whereon men have to pass to and from their work on foot, places of refuge must be cut in the side wall at least two and one-half (2½) feet deep, measuring from the side of the car, and not more than twenty yards apart, but such places shall not be required in entries from which rooms are driven at regular intervals not exceeding twenty yards, and whenever there is a clear space of two and one-half (2½) feet between the car and the rib, such places shall be deemed sufficient for the safe passage of men. All places of refuge shall be kept clear of obstructions and no material shall be stored therein, excepting in cases of emergency, nor be allowed to accumulate therein. At every mine where ten or more men are employed inside, it shall be the duty of the operator thereof to keep always on hand, readily accessible and near the mouth of the mine, a properly constructed and comfortable stretcher; a woolen and water-proof blanket; a roll of bandages in good condition for immediate use for bandaging and dressing wounds of any one injured in such mine;

a supply of linseed oil, lime, camphor, turpentine, antiseptic gauze, dressing and surgeon's splints for the dressing of broken bones; also to provide comfortable apartment near the mouth of the mine, in which any one so injured may rest while awaiting transportation to his home, and to provide for the speedy transportation of any one injured in such mine to his home.

(Acts 1907, p. 334. In force April 10, 1907.)

8582. *Width of entries.*—1. That it shall be unlawful for any owner, lessee, agent or operator of any coal mine within the State of Indiana to make, dig, construct, or cause to be made, dug or constructed any entry or trackway after the taking effect of this act, in any coal mine in the State of Indiana where drivers are required to drive with mine car or cars unless there shall be a space provided on one or both sides continuously of any track or tracks measured from the rail, in any such entry of at least two (2) feet in width, free from any props, loose slate, debris or other obstruction so that the driver may get away from the car or cars and track in event of collision, wreck or other accident. It shall be unlawful for any employe, person or persons to knowingly, purposely or maliciously place any obstruction within said space as herein provided: Provided, That the geological veins of coal numbers three and four, commonly known as the lower and upper veins in the block coal fields of Indiana shall be exempt from the provisions of this act.

8583. *Penalty.*—2. Any such owner, lessee, operator, person or persons, violating any of the provisions of this act shall be guilty of misdemeanor and upon conviction

thereof shall be fined in any sum not to exceed two hundred dollars, and to which fine may be added imprisonment in the county jail, not to exceed sixty days.

(Acts 1905, p. 65. In force April 15, 1905.)

8584. (7442.) *Approaching abandoned workings, water or gas.*—14. When approaching abandoned workings which are supposed to contain dangerous accumulation of water or gases, the excavation approaching such places shall not exceed eight feet in width, and there shall be constantly kept, at a sufficient distance (not less than three yards in advance) one bore hole near the center of the workings, and sufficient flank bore holes on each side. When two or more veins are worked in the same mine they shall be so operated that no danger will occur to the miners working in either vein.

8585. (7443.) *Timber supply, blackboard.*—15. The operator of any mine shall keep a sufficient supply of timber at the mine, and deliver all props, caps and timber (of proper lengths) to the rooms of the workmen, when needed and required, so the employes may, at all times, be able to properly secure the workings from caving in. Every operator operating mines in this state shall place a blackboard near the mine entrance sufficienty large, stating thereon in figures the lengths of all timber in use in said mine. The miners shall register thereon, when needing timber for securing their working places, their respective numbers, under the figures indicating the proper lengths of timber required.

8586. (7444.) *Injury to safety appliances.*—16. Any person who shall, knowingly, injure or interfere with any

safety lamp, air course, or with any brattice or obstruct or throw open doors, or disturb any part of the machinery, or ride upon a loaded car or wagon in any mine, or do any act whereby the lives or health of the persons or the security of the mines or machinery are endangered, shall be deemed guilty of a misdemeanor.

8587. (7445.) *Explosives, blastnig or shooting, tools.*—17. Whenever any person is about to open a keg or box containing powder, or other explosives, he shall place and keep his light at least five feet distant from said explosive, and in such a position that the air current can not carry sparks to it; and no person shall approach nearer than five feet to any open box or keg containing powder or other explosives with a light or pipe or any other thing containing fire. In any mines of this state, where coal is mined by "blasting off the solid" it shall be unlawful for any miner or other person to drill any hole, for the purpose of blasting, more than one foot past the end of his cutting or "loose end" or to prepare a "shot" in such a way that the distance from the hole to the loose end shall be more than five feet, measured at right angles to the direction of the hole. In the process of charging or tamping a hole, no person shall use any iron or steel needle or tool, except as herein provided. The needle used in preparing the blast shall be made of copper, and the tamping bar shall be tipped with at least five inches of copper. No coal dust or any material that is inflammable, or that my create a spark, shall be used for tamping and some soft material shall be placed next to the cartridge or explosive.

8588. (7446.) *Illuminating oils.*—18. Only a pure animal or vegetable oil, or other oils that shall be as free

from smoke as a pure animal or vegetable oil, and not the product of rosin, and which shall, in inspection, comply with the following list, shall be used for illuminating purposes in the mines of this state: All such oils must be tested by the state supervisor of oil inspection or his deputies at 70 degrees Fahrenheit. The specific gravity of the oil must not exceed 24 degrees. The test of the oil must be made in a glass jar one and five-tenths (1 5-10) inches in diameter by seven (7) inches in depth. If the oil be above 45 degrees and below 70 degrees Fahrenheit, it must be raised to a temperature of about 80 degrees Fahrenheit, when, after being well shaken, it shall be allowed to cool gradually to a temperature of 70 degrees Fahrenheit before being finally tested. In testing the gravity of the oil the hydrometer must be, when possible, read from below, and the last line which appears under the surface of the oil shall be regarded as the true reading. In case the oil under test should be opaque or turbid, one-half of the capillary attraction shall be deemed and taken to be the true reading. When the oil is tested under difficult circumstances, an allowance of one-half degree may be made for possible error before condemning the oil for the use in the mine. All oil sold to be used for illuminating purposes in the mines of the state shall be contained in barrels or packages, branded conspicuously with the name of the dealer, the specific gravity of the oil and the date of shipment. Any individual, firm, corporation or company that sells or offers for sale any oil other than provided in section 18 to be used for illuminating purposes in coal or other mines of the state, or the individual, firm, corporation, company or person having in charge the operation or running of any mine, who permits

the use in his or their mine of any oil for illuminating purposes other than provided for in section 18, or any employe in any mine of this state, who uses with a knowledge of its character, a quality of oil other than is provided for in section 18, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than five ($5) dollars nor more than twenty-five ($25) dollars.

8589. (7447.) *Check-weighman.*—19. Whenever the mining of coal is paid for by weight, the miners employed in mining the same shall have the right of selecting and keeping in the weigh office, or at the place of weighing coal, a check-weighman, who shall be vested with the same rights as described in section 9 of this act, said check-weighman to be paid by said miners.

8590. (7448.) *Inspector of mines, appointment, assistants, salaries, duties.*—20. The state geologist shall appoint an inspector of mines, who shall hold his office for two years or until his successor shall be appointed and qualified, and he shall require all applicants for such office to pass an examination touching their qualifications and fitness to discharge the duties thereof before making such appointment. And the state geologist is hereby empowered to make such rules and regulations in conducting such examinations as in his judgment will test the competency and fitness of such applicants: Providing, further, That the state geologist shall give a certificate of appointment to the person appointed, which certificate shall entitle such appointee, when qualified, to do and perform all duties of his office as inspector of mines. The inspector of mines shall appoint two assistants, who have each passed such

examination touching their qualifications for such position as may be prescribed by him. The inspector of mines shall execute certificates of such appointments and deliver the same to each of such assistants, who shall qualify by each executing a bond and taking an oath in the manner and form provided by this act, and when so qualified, each such assistant is authorized and empowered to draw his salary and to perform all duties of his office as prescribed by this act. Each of such assistants shall be subject to orders and directions of the inspector of mines, and, in pursuance of such orders and directions, is empowered to do any and all acts to perform all duties incumbent upon the inspector of mines. They shall each make a detailed and itemized report as often as required, to the inspector of mines, of the work performed by him and shall hold his office subject to removal at any time by such inspector of mines for cause. The inspector of mines and his assistants, shall be residents of the State of Indiana for at least five (5) years immediately preceding their appointment to office, and shall be practical miners of at least ten years' experience in actual mining, and no person shall be eligible to hold the office of inspector of mines or assistant inspector of mines who is or may be pecuniarily interested in any coal mine within this state either directly or indirectly. The inspector of mines and his assistants before entering upon the duties of their offices, shall each execute a bond payable to the State of Indiana, with good and sufficient surety, in the sum of one thousand dollars ($1,000), and shall take and subscribe to an oath to be indorsed upon the back of each bond for the faithful performance of the duties of the office, which bond shall be approved by and filed with the secre-

tary of state. The inspector of mines shall receive as compensation for his services the sum of one thousand eight hundred dollars ($1,800) per annum, and each assistant inspector of mines shall receive as compensation for his services the sum of one thousand two hundred dollars ($1,200) per annum. And for expenses they shall receive the sum actually and necessarily expended for that purpose, in the discharge of their official duties, all to be paid quarterly by the state treasurer from funds in the state treasury not otherwise appropriated. All expense bills shall be sworn to and shall show the items of expense in detail. Said inspector of mines may also appoint a secretary to assist him in the discharge of his duties, who shall receive a salary of six hundred dollars ($600) per annum. It shall be the duty of the inspector of mines appointed under this act to enter, examine and inspect any and all coal mines, and the works and machinery belonging thereto, at any reasonable time, by day or by night, but so as not to hinder or obstruct the working of any coal mine more than is reasonably necessary in the discharge of his duties; and the operator of such coal mine is hereby required to furnish the necessary facilities for such entry, examination and inspection. Should the operator fail or refuse to permit such inspection or furnish such facilities the operator so failing shall be deemed to have committed a misdemeanor, and it is hereby made the duty of such inspector to charge such operator with such violation, under oath, in any court having jurisdiction. The inspector appointed under this act shall devote his entire time and attention to the duties of his office. He, or his assistants, shall make personal inspection, at least twice each year, of all coal

mines in this state, and shall see that every precaution is taken to insure the health and safety of the workmen therein employed, that the provisions and requirements of this act are faithfully carried out, and that the penalties of the law are enforced against all who wilfully disobey its requirements. He shall also collect and tabulate the following facts: The number and thickness of each vein or stratum of coal and their respective depths below the surface, which are now worked or may hereafter be worked; the kind or quality of coal; how the same is mined, whether by shaft, slope or drift; the number of mines in operation in each county, the owners thereof; the number of men employed in each mine, and the aggregate yearly production of tons from each mine; estimate the amount of capital employed at each mine; and give any other information relative to coal and mining that he may deem necessary; all of which facts, so tabulated, together with a statement of the condition of mines as to safety and ventilation, he shall freely set forth in an annual report to the state geologist, together with his recommendation as to such other legislation on the subject of mining as he may think proper. It shall be the duty of the inspector of mines, in addition to his other duties, to examine all scales used at any mine for the purpose of weighing coal taken out of said mine. The scales shall be tested by sealed weights; the same shall be furnished to said inspector of mines by the auditor of state on requisition, the cost of which shall be audited by the auditor of state and paid out of any money in the state treasury not otherwise appropriated. And on inspection, if the scales are found incorrect, and after written notice by the inspector of mines, it shall be unlawful for any

operator to use or suffer the same to be used until the scales are adjusted to weigh correctly. The provisions of this law shall apply to all mines except to mines employing less than ten men. And it shall be the duty of the inspector of mines to see to the strict enforcement of all laws relating to mines and mining, to investigate all violations of the law relating thereto, file complaints and make affidavits against such violators before the proper court of justice and to see to the enforcement of all penalties prescribed by the statutes of the state for disobedience to its provisions relating to mines and mining, and failure to do so may be sufficient cause for his removal from office. The inspector of mines shall make an annual report to the state geologist of all matter now required by law to be reported, which report shall be published with the report of the state geologist, and shall in every respect comply with the laws pertaining to the inspection of mines.

8591. (7449.) *Examinations by inspector, places, fee, notice.*—21. It shall be the duty of the inspector of mines to hold examinations for certificates of service and competency in each of the cities of Brazil, Terre Haute, Washington and Evansville, and to publish notice of such examinations, stating the time and place where examinations are to be held, and shall make and publish rules and regulations under which such examination shall be conducted. For the purpose of providing for the expense of holding the examinations and issuing the certificate herein provided for, each applicant, before entering upon examination, shall pay the inspector of mines one dollar, a receipt for which must be indorsed upon each certificate before it becomes effective. Examinations for certificates of service or competency

shall be public and open to all citizens of the United States, and at least fifteen days' notice of such examinations shall be given by publication in a newspaper published in the city where such examination is to be held. No certificate shall be issued to any person entitling him to serve in more than one of the capacities set out in this section, but two or more certificates may be issued to the same person on proper examination.

8592. (7450.) *Certificate of competency.*—22. Certificates of competency shall be issued by the inspector of mines to any person who shall prove satisfactory upon examination, either written or oral, or both, as may be prescribed by such inspector, that he is qualified by experience and technical knowledge to perform the duties of either mine boss, fire boss, or hoisting engineer. Certificates of service shall be issued by the inspector of mines to any person who shall furnish satisfactory proof that he has been engaged as, and has successfully discharged the duties of mine boss, fire boss, or hoisting engineer at mines in this state for three years preceding the granting of such certificate. It shall be unlawful for any person to serve in the capacity of mine boss, fire boss, or hoisting engineer at any mine without having first received from the inspector of mines a certificate of service competency. It shall be unlawful for any operator of any mine in this state to employ any person in the capacity of mine boss, fire boss, or hoisting engineer unless such person has a certificate from the inspector of mines.

8593. (7451.) *Monthly report to inspector.*—23. The operator of every mine shall be and is hereby required to report to the inspector of mines on or before the 15th day

of each calendar month the name of the person in charge of such mine, the number of tons of coal produced at such mine during the preceding month, the amount of wages paid employes during such month, the amount of money expended for improvements during said month, together with such other information as may be necessary to enable said inspector to prepare his annual report as required by law.

8594. (7452.) *Who may not be employed.*—24. No male person under the age of fourteen years or female of any age shall be permitted to enter any mine in this state for the purpose of employment therein, and the parents or guardians of boys shall be required to furnish an affidavit as to the age of said boy or boys when there is any doubt in regard to their age, and in all cases of miners applying for work the operator of any mine shall see that the provisions of this section are not violated.

8595. (7453.) *Wages, transfer, payment by check.*—25. Whenever any merchant or dealer in goods or merchandise, or any other person, shall take from any employe or laborer for wages, who labors in or about any mine in this state, an assignment of such employe's wages, earned or unearned, due or to become due, or shall take from such employe or laborer any order on his employer for any such wages, and shall issue or give to any such employe or laborer in consideration of or in payment for any such assignment or transfer or order, any check, other than a check on a solvent bank, or any ticket, token or device payable or redeemable, or purporting to be payable or redeemable, or agreed to be payable or redeemable, in goods, wares, or merchandise or anything other than lawful

money of the United States, such check, ticket, token or device shall at once become due and payable in lawful money of the United States, for and to the extent of the full amount of the wages assigned or relinquished for it, and the holder of such checks, ticket, token or device shall, after demand, have the right to collect the same, with reasonable attorney's fees, by suit in any court of competent jurisdiction.

8596. (7454.) *Liens, labor or royalty.*—26. The miners and other persons employed and working in and about the mines and others interested in the rental or royalty on the coal mined therein, shall have a lien on said mine and all machinery and fixtures connected therewith, and everything used in and about the mine, for work and labor performed within two months, and for royalty on the coal mined for any length of time not exceeding two months; and such liens shall be paramount to and have priority over all other liens, except the liens of the state taxes; and such liens shall have priority, as against each other, in the order in which they accrued, and for labor over that for royalty on coal. Any person to acquire such lien shall file in the recorder's office of the county where the mine is situated, within sixty (60) days from the time the payment became due, a notice of his intention to hold a lien upon such property for the amount of his claim, stating in such notice the amount of his claim, and the name of the coal works, if known, or any other designation describing the location of said mine; and the recorder shall record the said notice, when presented, in a book used for recording mechanic's liens, for which the recorder shall receive a fee of twenty-five cents. Suits brought to enforce any

lien herein created shall be brought within one year from the date of filing in the recorder's office; and all judgments rendered on the foreclosure of such liens shall include the amount of the claim found to be due, with interest on same from the time due, and with a reasonable attorney's fee, the judgment to be collected without relief from valuation, appraisement or stay laws.

8597. (7455.) *Injuries, liability.*—27. For any injuries to person, or persons, or property, occasioned by any violation of this act, or failure to comply with any of its provisions, a right of action against the operator shall accrue to the party injured for the direct injury sustained thereby; and in case of loss of life by reason of such violation, a right of action shall accrue in favor of the personal representatives of the deceased against such operator, if the deceased might have maintained an action, had he lived, against the operator for an injury for the same act or omission. The actions shall be commenced within two years. The damages in case of death can not exceed ten thousand ($10,000) dollars, and must inure to the exclusive benefit of the widow and children, if any, or next of kin, to be distributed in the same manner as personal property of the deceased. (As amended, Acts 1909, p. 259.)

8598. (7456.) *Penalties.*—28. Any willful neglect, refusal or failure to do the things required to be done by any section, clause or provision of this act, on the part of the person or persons herein required to do them, or any violation of the provisions or requirements hereof, or any attempt to obstruct or interfere with any inspector of mines in the discharge of the duties herein imposed upon him, or any refusal to comply with the instructions of an

inspector of mines by authority of this act, shall be deemed a misdemeanor punishable by a fine not exceeding five hundred dollars ($500) or by imprisonment in the county jail for a period not exceeding six months, or both, at the discretion of the court: Provided, That the foregoing shall not apply to sections in this act which have special penalties provided for them.

(Acts 1903, p. 176. In force March 5, 1903.)

8599. (7457.) *Examination by adjacent owners.*—1. That the owner, tenant or occupant of any land or lands on which a coal mine is opened and operated, and also the person or persons owning or operating such mine, or the agent of any of them, shall permit any person or persons interested in or having title to any land or lands coterminous with the land or lands on which such mine is located, to have ingress and egress together with surveyors and assistants, into said mine, for the purpose of measuring, exploring and surveying such mine, for the purpose of ascertaining whether or not any coal has been, or is being, mined and taken from lands so owned by such person or persons; it being provided that such survey and measurements shall be made not oftener than once a month and shall be made at the expense of the party making such measurements or survey.

8600. (7458.) *Consent refused, forfeiture.*—2. Any owner, tenant, occupant, agent, or mine owner or operator, who shall refuse permission to permit such measurements, exploration or survey, as provided for in the last preceding section of this act, shall forfeit the sum of one hundred dollars for each refusal to the person so refused, which

shall be collectible by suit in any court of competent jurisdiction in the state.

8601. (7459.) *Facilities afforded, refusal, forfeiture.*—3 If the owner of any coterminous land, or his agent, desires to make an examination, measurement or survey of any such mine or any part thereof, situated and operated on adjoining lands, then the operator or superintendent of such mine shall upon demand, provide every proper facility for making such survey with accuracy and safety to the owner of such coterminous land or to any surveyor or assistants who may make such examination or survey, by driving good air into and dangerous gases from the part to be so examined and surveyed, and shall remove any obstructions that will prevent such survey, and shall provide any assistance if so called for by the surveyor, so that the encroachments, if any, on such coterminous lands may be clearly determined by such examination or survey. Any person violating the provisions of this section shall forfeit twenty dollars a day for each day which he refuses to comply with such demand, which amount such coterminous owner may collect by suit in any court of the state.

(Acts 1907, p. 347. In force April 10, 1907.)

8602. *Explosives in mines.*—1. That it shall be unlawful for any person to have in his possession, or under his control within any coal mine in the State of Indiana, any dynamite cap, dynamite or other high explosive without first obtaining in writing the consent of the mine foreman or other person in charge of the operation of said mine, setting forth the use for which any such cap or explosive may be particularly intended.

8603. *Shots, preparations, use of powder.*—2. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state, to prepare any "shot" in such a way that the distance from the drill hole to the "loose end," chance or end of cutting shall be more than five feet measured at right angles to the direction of the hole; or to place any charge of powder or other explosive in any drill hole prepared for any "shot" in which the breast of coal to be dislodged is of greater width than the depth of the drill hole; or to use in preparing any "shot" more than six pounds of powder; or to place any powder in any drill hole for the purpose of preparing any "shot" without measuring the amount so placed therein with a substantial measure so made as to indicate the weight of blasting powder measured therein; or to open a keg, can or other package containing powder, by means of pick or in any other manner except in pursuance of the manner provided in the manufacture of such keg, can or package; or to sell or offer for sale any keg, can or package containing powder, unless such can, keg or package be provided with a sufficient device for opening the same and permitting the discharge therefrom of all the powder therein contained; or to store any blasting powder, dynamite or other high explosive in any coal mine; or to prepare any drill bit more than three and one-quarter (3¼) inches in diameter to be used in boring holes for the purpose of preparing any shot or to use any dynamite or other high explosive in conjunction with black powder. It shall be unlawful for any owner, operator or lessee of any coal mine, coal shaft or slope coal mine to refuse, fail or neglect to sharpen and prepare for use any bit for preparing drill holes, if such bit is three and one-

quarter (3¼) inches in diameter, or less, and such owner, operator or lessee, or his representative, has been requested to prepare and sharpen the same by any owner of such bit or bits. (As amended, Acts 1909, p. 330.)

The original of this section was amended in 1908, Acts Spec. Sess. 1908, p. 15.

8604. *Drilling.*—3. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state, except in any mine producing block coal, to drill any hole past the end of his cutting "loose end" or "chance."

8605. *Prima facie violations.*—4. If upon inspection of any working place in any coal mine there shall be found the remnants of drill holes drilled past the cutting, loose end or chance, or the remnants of any shot measuring more than the maximum width, or if any miner shall be found to have in his possession in his working place any keg, can or package containing powder and which has been opened in any other manner than that provided by law, the same or either thereof respectively shall be and constitute prima facie evidence that the workman in whose working place such evidence is found guilty of a violation of sections 2 or 3 of this act, or a part thereof, as the case may be.

8606. *Simultaneous explosions.*—5. It shall be unlawful in any coal mine for any person to explode or light any shot in any working place simultaneously with the explosion or lighting of any shot by the same or any other person in any other working place on the same entry, except in working places where the coal is under cut by machinery.

8607. *Stairway.*—6. That at all coal mines where any escapeway or manway is hereafter constructed, the same shall be provided with a good and sufficient stairway, ac-

cording to the specifications for mine stairways now provided by law, and of suitable design and strength to accomplish the purpose for which it is intended.

8608. *Cage and cage landing.*—7. It shall be unlawful for any person desiring carriage upon any cage to approach nearer than six (6) feet to any "cage landing" when such cage is not at reast at such landing; or to crowd on to said cage in a rude or boisterous manner; or to enter upon any such cage when there are already upon the same one person for each three square feet of the floor of such cage: Provided, That nothing herein contained shall affect any person in charge of the operation of such cage or the machinery moving or affecting the same: And, provided further, That as many persons may after the passage of this act enter a cage for carriage as the same will accommodate, giving each person three square feet of floor space.

8609. *Material for tamping.*—8. It shall be the duty of the operator or owner of any coal mine wherein fire or other non-inflammable material suitable for use in tamping in preparing shots can not be readily obtained, to provide and deposit within said mine such material, and at points within five hundred feet from the face of each entry in such mine. In case any dispute may arise as to the construction proper to be placed upon the above provision, or as to the duty of any such operator or owner thereunder, such dispute shall be finally determined by the inspector of mines.

8610. *Shot firers.*—9. That at any coal mine in the state where the miners working therein so elect, persons may be employed to act as shot firers, and their wages shall be paid by the miners working therein: Provided,

That nothing herein contained shall affect any existing contract as to shot firers.

8611. *Mine inspector, assistants, duties, pay.*—10. The result of all coal mine inspections made by the inspector of mines or any of his assistants, showing all his conclusions as to the condition of safety of the mines and orders given in the inspection of any coal mine shall be posted in writing at the entrance to such mine immediately upon the conclusion of each inspection. The inspector of mines or his assistants shall make personal inspection of all coal mines in the state at least three times each year instead of twice each year, as heretofore provided by law, and to enable said inspector and his assistants to discharge all the duties created by this act and other acts the number of his assistants is hereby increased from two to four. Such additional assistants shall possess the same qualifications and perform the same duties required by this and any and all other laws, and shall be appointed, empowered, and in all things governed in the same manner and by the same laws applicable to assistants to such inspector of mines, heretofore existing under former laws. Such additional assistants shall each receive for his services the sum of one thousand two hundred dollars per annum; and for expenses they shall receive the sum actually and necessarily expended for that purpose in the discharge of their official duties, all to be paid quarterly by the state treasurer from funds in the state treasury not otherwise appropriated. All expense shall be sworn to and shall show the items of expense in detail. Such inspector and each of his assistants are hereby charged with the duty of enforcing this act and all other laws relating to the health and safety of per-

sons and property employed and used in and about the coal mines of the state.

8612. *Police powers.*—11. The inspector of mines and each of his assistants are hereby empowered to act as police officers, with full powers to arrest and detain any person found violating any provisions of this act or any other mining law, or engaged in any attempt to violate any such law or part thereof, or against whom there is found any evidence of a previous violation of such law: Provided, however, That no such person shall be detained for any period of time longer than twenty-four hours without warrant or the filing of a charge against him in a court of competent jurisdiction. Such inspector and each of his assistants shall also have power to immediately stop the operation of any coal mine, or part thereof, in which any dangerous or unlawful condition is found: Provided, however, That where conditions exist justifying him to do so, he may grant a reasonable length of time for making necessary repairs: And, provided further, That where any stop is enforced, such inspector and his assistants shall each have power to subsequently allow such mine or part of mine to be reopened when the dangerous or unlawful conditions have been remedied or removed, so that they no longer exist.

8613. *Sprinkling, inspector may order.*—12. The inspector of mines shall have power in his discretion to order the sprinkling of any coal mine or part of mine by notice in writing to the operator thereof, or person in charge of the same, and after receiving such notice it shall be unlawful for any person to act in violation thereof and to omit such sprinkling. Copies of any notice given hereunder

shall be posted at the mine entrance by the inspector of mines.

8614. *Certificates of service.*—13. After the passage of this act no further certificates of service shall be issued by the inspector of mines to any person to act as mine boss, fire boss or hoisting engineer: Provided, however, That nothing herein contained shall affect any certificate of service heretofore issued.

8615. *Penalties.*—14. Any person violating any provision of this act or wilfully refusing, neglecting or failing to do anything required to be done by any provision hereof by such person or obstructing or attempting to obstruct or interfere with the inspector of mines or any of his assistants in the discharge of any duty imposed by law, or refusing, failing or neglecting to comply with the proper orders of the inspector of mines, or his assistants, shall be guilty of a misdemeanor punishable on conviction by a fine not exceeding five hundred dollars, to which may be added imprisonment in the county jail for a period not exceeding six months, in the discretion of the court or jury trying any such cause.

8616. *Inspectors, failure in duties, penalty.*—15. Whoever, being an inspector of mines or an assistant thereof, shall fail, neglect or refuse to perform any duty required of him by this or any other law relating to the health and safety of persons employed in coal mines and matters connected therewith, shall upon conviction thereof be fined not to exceed five hundred dollars, and upon a second conviction for an offense hereunder shall, upon the certification of judgment thereof to the proper officer holding the power of appointing his successor, be immediately removed from office by such officer without any further proceedings.

8617. *Eligibles, preparation of questions.*—16. On, or before January 1, 1909, and biennially thereafter, it shall be the duty of the state geologist and chemist to the state board of health to prepare a list of questions on the subjects of mine engineering, chemistry as applied to coal mining, and the practical operations of coal mining as concerns the coal mining industry in Indiana. These questions shall be so prepared and the answers so graded that it shall be possible for an applicant to make twenty-five (25) points on the questions relating to mine engineering; twenty-five (25) points on the questions relating to chemistry as applied to coal mining; and fifty (50) points on the questions relating to the practical operations of coal mining.

8618. *Examinations by state chemist.*—17. Within fifteen (15) days from the first day of January, 1909, and biennially thereafter, the chemist to the state board of health shall hold an examination using the said list of prepared questions, in the state capitol, which examination shall be open to any male citizen of the state of over twenty-one (21) years of age, of good moral character, who has had at least five years' experience as a practical coal miner, and shall grade the manuscripts of all persons taking such examinations, and shall prepare and certify to the state geologist an eligible list of all applicants who shall make a grade of eighty-five per cent. or greater.

8619. *State geologist, appointment of inspector.*—18. The state geologist immediately thereafter shall appoint from said eligible list an inspector of mines to serve for a period of two (2) years; and the inspector of mines thus appointed shall appoint from eligible list his deputies, as now or hereafter may be provided by law. Said inspector

shall qualify as now provided by law, and shall have all the powers, duties and compensation as now provided by law, and shall be subject to removal by said geologist for cause, as provided by law. In case of death, resignation or removal of the inspector of mines, the state geologist shall appoint his successor from said eligible list.

8620. *Assistant inspector.*—19. The assistant inspector of mines shall qualify as now provided by law, and shall have the same powers, duties and compensation, with traveling expenses, as now provided by law. Said assistant inspectors of mines may be removed by the inspector of mines, as now provided by law. In case of death, resignation or removal of any of said assistant inspectors of mines, the inspector of mines shall appoint his successor from said eligible list.

8621. *Eligible list exhausted.*—20. In case the said eligible list shall be exhausted before the date of regular biennial examination, appointments shall be made from the list of applicants who passed the last examination: Provided, That the person holding the highest grade shall be first chosen.

8622. *Act cumulative.*—21. The provisions of this act shall be cumulative of other laws upon the subject of coal mining: Provided, however, That all laws and parts of laws in conflict herewith are hereby repealed.

(Acts 1907, p. 193. In force April 10, 1907.)

8623. *Wash houses for laborers.*—1. That for the protection of the health of the employes herein mentioned it shall be the duty of the owner, operator, lessee, superintendent of, or other persons in charge of every coal mine or

colliery, or other place where laborers employed are surrounded by or affected by similar conditions as employes in coal mines, at the request in writing of twenty (20) or more employes of such mine or place, or in event there are less than twenty (20) men employed, then upon the written request of one-third (⅓) of the number of employes employed, to provide a suitable wash room or wash house for the use of persons employed, so that they may change their clothing before beginning work, and wash themselves, and change their clothing after working. That said building or room shall be a separate building or room from the engine or boiler room, and shall be maintained in good order, be properly lighted and heated, and be supplied with clean cold and warm water, and shall be provided with all necessary facilities for persons to wash, and also provided with suitable lockers for the safe keeping of clothing: Provided, however, That the owner, operator, lessee, superintendent of or other person in charge of such mine or place as aforesaid shall not be required to furnish soap or towels.

8624. *Penalty.*—2. If any person, persons or corporation shall neglect or fail to comply with the provisions of this act, or shall maliciously injure or destroy or cause to be injured or destroyed said building or room, or any part thereof or any of its appliances or fittings used for supplying light, heat or water therein, or shall do any act tending to the injury or destruction thereof, he or they shall be guilty of misdemeanor, and upon conviction shall be fined in any sum not to exceed five hundred ($500) dollars, to which fine may be added imprisonment in the county jail not to exceed sixty (60) days.

(Acts 1911, p. 658. In force April 1, 1911.)

8624a. *Coal mining, examining board.*—1. That the business of mining coal is hereby declared a dangerous occupation, industry and business subject to the provisions of this act. In every county in this state where the business of coal mining is carried on or shall hereafter be carried on, the board of county commissioners of such counties shall appoint a miners' examining board, said board to consist of two resident coal miners who shall have had at least five years' practical experience in mining coal and shall at the time of their appointment be engaged as miners of coal in the county wherein they are appointed and one resident of said county who is a coal operator or mine owner. It shall be lawful for the coal miners individually or through their organizations to recommend coal miners for such appointment on such boards and for the coal operators or mine owners to recommend some mine owner or coal operator for such appointment. Said members of said boards shall hold office until the first Monday of the January next following their appointment, or until their successors shall have been appointed and qualified. Any vacancy occurring on any of the said boards may be filled by the board of county commissioners at any regular session of said board. The first appointments shall be made immediately after this act becomes effective and thereafter on the first Monday of each January of each year, or any time thereafter: Provided, That the provisions of this act shall not apply to any county in this state unless there is located in such county a coal mine employing ten (10) or more miners.

8624b. *Organization of board, oath, compensation.*—2. Each board shall organize by electing one of their number president and one member as secretary and one as treas-

urer: Provided, That the same member may serve as both secretary and treasurer. Each member shall within ten days after his appointment qualify by taking oath or affirmation before some qualified officer that he will faithfully, honestly and impartially discharge his official duties, which oath shall be filed with the auditor of the county in which he resides and from which he is appointed. The member being chosen as treasurer shall qualify by filing with the auditor his bond in the penal sum of five hundred dollars, which bond shall be approved by the board of county commissioners. Members of said board shall receive as compensation for their services the sum of four ($4.00) dollars per day for each day actually engaged in their official duties, and all legitimate and necessary expenses incurred in attending the meetings of said board, which sum shall be allowed by the county commissioners, and money for the payment of the same shall be appropriated by the common council, and the county treasurer shall pay the same.

8624c. *Workman's certificate, fee, forms.*—3. After the 15th day of May, 1911, no person shall be employed or engaged as a miner in any coal mine in this state without first obtaining a certificate of competency and qualification so to do from the miners' examining board of some county in the State of Indiana: Provided, That the above provisions shall not prevent the employment of a person not having such certificate to work in the same room with or under the direction of a miner having such certificate, for the purpose of becoming qualified to become a miner and to receive such certificate under the provisions of the act: Provided, That any male person desiring to work with a qualified miner to become qualified shall first obtain a per-

mit from the miners' examining board by stating his age, nativity and residence and paying the sum of one ($1.00) dollar therefor. The miners' examining board shall grant a permit to all applicants who are of legal age and who have such intelligence and character that they will not be a menace to life and property. It shall be the duty of the state mine inspector to prepare the form of certificates, permits and books specified and provided for in this act and it shall be the duty of all miners' examining boards in this state to use and adopt the forms prescribed and prepared by the state mine inspector. All expenses provided for and authorized by this act shall be paid out of the county treasury of the counties where the boards contracting the same are located.

8624d. *Registry record, contents.*—4. The said board shall keep a permanent book for the purpose of registering the names of all applicants for certificates of competency and qualifications and of all persons applying for permits to work for the purpose of learning the business or occupation of mining. Said book shall contain a printed form of application which shall be filled out, signed and sworn to by each applicant showing his name, address, nativity, date of birth, race and residence of parents, if living, and what experience, if any, such applicant has had in mining and the location of mines where such applicant has been employed, if at all, for at least two years prior to the application; all applicants shall sign such application and be sworn to the same by some member of the miners' examining board, or other authorized person.

8624e. *Fee on application, accounting, names.*—5. Each applicant for a certificate or permit shall pay said miners'

examining board at the time of application a fee of one ($1.00) dollar. All money received by said board shall be paid over to the county treasurer at least once a month. The said board shall annually on the first Wednesday of January of each year report to the board of county commissioners appointing them the names of all persons applying for certificates and permits, the amount of money received and disbursed, the names of all persons granted certificates and permits and the names of all persons refused certificates and permits. In every case where an applicant is refused a permit or certificate it shall be the duty of said examining board to keep a complete record of the questions asked and answers given and the secretary of said board shall furnish a copy of same to any applicant desiring an appeal to any court of competent jurisdiction free of charge.

8624f. *Monthly meetings, public examinations, language.*—6. It shall be the duty of said board to meet on the first Wednesday of each month, but when the said day falls on a legal holiday then the day following, and said meeting shall be public, and when necessary the meeting shall be continued from day to day for not to exceed three days, if business requires: Provided, That for the first and second sessions the respective boards may continue in session for a period not to exceed ten days, if business requires. The examination of all applicants shall be public and in the English language: Provided, however, That in the event of a non-English speaking applicant so desiring, an interpreter shall be employed, which interpreter shall first be sworn to correctly and truly interpret all questions and answers in the performance of his duty. The members

of the board shall have power and authority to administer oaths and all applicants for certificates and permits shall be first sworn and orally examined in regard to their qualifications. All applicants for qualification certificates may be required to furnish satisfactory evidence of their experience in mining and shall possess sufficient knowledge to be able to understand warnings in regard to dangerous gases and explosives. In no event shall an applicant be deemed competent and qualified unless he appears in person before said board and answers intelligently at least fifteen questions propounded to him pertaining to practical mining, which questions shall cover dangerous gases and other combustibles and explosives and the preparation of shots and timbering, but in no event shall technical questions be included in the examination: Provided further, That when an applicant possess a miner's qualification certificate of some other state where a miner's qualification law may be in effect, he shall be entitled to a qualification certificate in this state without the formality of an examination. Said board shall keep accurate records in permanent form of all proceedings of all sessions held by them containing the names and addresses of all applicants for permits and certificates and the action taken thereon, which records shall be open for inspection at all times by persons interested. All sessions shall be held in public but the boards shall, when requested by three miners, or may on their own motion, separate the applicants and exclude those not examined from the room where the examination is being held. It shall be unlawful for any person to disclose to any applicant before his examination the questions to be asked or the answers thereto: Provided, That in counties in this

state where according to the last report of the state mine inspector there are less than one hundred and fifty coal miners employed the miners' examining board of such counties shall hold meetings only on the first Wednesdays of January, April, July and October of each year. The miners' examining board in any county shall employ an interpreter at any meeting where a majority deem it necessary, which interpreter shall first be sworn to correctly and truly interpret all questions and answers in the performance of his duty and for any false interpretation of fraudulent acts or violations of any provision of this act shall be subject to the punishment prescribed in section 12 of this act.

8624g. *Competency, determination, certificate, no transfer.*—7. All applicants who shall answer fifteen questions correctly and shall be otherwise qualified and adjudged competent under this act shall be granted a certificate, which certificate shall not be transferable. No certificate shall be issued unless signed by at least two members of the board. No permit shall be transferable nor issued to any minor under the age prescribed by law.

8624h. *Refusal of certificate, appeal, fraud.*—8. Any applicant being refused a certificate or permit by any miners' examining board and feeling himself aggrieved may appeal to the circuit or superior court located in the county where such board is located and such court shall have the power to issue such orders therein as may be lawful and just, but no costs shall be assessed or adjudged against any member of a miners' examining board upon such review of their action. The prosecuting attorney, state mine inspector or any member of any miners' examining

board having information that any person has obtained a certificate or permit by means of fraud, misrepresentation or by other unlawful means, or has permitted or is permitting any other person to use his certificate or permit, or that any person is using the certificate or permit which was issued to another person shall file information before the judge of the circuit or superior court located in the county where such person is resident or employed and cause summons to be issued as in civil cases: Provided, however, If such officers fail or refuse to file such information, then any private citizen may file such information on the relation of the State of Indiana. If the court or jury shall after a trial or hearing in such cause, find that such certificate or permit has been unlawfully or wrongfully issued, or that such person has used the certificate or permit of another or permitted another to use his certificate or permit, then the judgment shall be that such certificate or permit be revoked and that costs be adjudged as in other civil cases: Provided further, That any person who obtains a certificate or permit by means of fraud, misrepresentation or by other unlawful means, or has permitted or is permitting any other person to use his certificate or permit, or any person who uses or permits to be used a certificate or permit to another shall also be subject to the penalties provided in section 12 of this act.

8624i. *Permit, working without.*—9. No person shall hereafter be engaged as a miner in any coal mine in this state in which ten (10) or more miners are employed without first obtaining a permit or certificate as required by this act. No person, firm, or corporation shall employ any person as a miner who does not hold a certificate or a

permit, as aforesaid, and no mine foreman or superintendent or other person shall permit or suffer any person to be employed under him in any mine under his charge or under his supervision, as a miner, who does not hold such certificate or permit.

8624j. *Two years' experience, certificate.*—10. No certificate of competency or qualification shall be granted to any applicant who has had two years' experience in mine work: Provided, That persons applying for certificates before the first day of July, 1911, may be granted certificates without examination, provided they shall establish by satisfactory evidence of at least three resident householders that they have been continuously engaged in practical mining two years or more prior to the time this act becomes effective.

8624k. *Mine inspector, investigation.*—11. It shall be the duty of the state mine inspector and all his deputies and all miners' examining boards and prosecuting attorneys to investigate all complaints of the violation of this law and to prosecute all such violations.

8624l. *Penalty.*—12. Any person, firm, or corporation violating any provision of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in any sum not less than one hundred ($100.00) dollars and not more than five hundred ($500.00) dollars, to which may be added imprisonment not to exceed six months in the county jail or workhouse. Any member of any miners' examining board, in addition to said penalties shall forfeit his office upon being convicted of violating any provision of this act.

Section 13 provides that the act shall take effect on April 1, 1911.

APPENDIX "B."

The State of Indiana in using its police power in the control and regulation of coal mining, has enacted many statutes and amendments, and on account of the peculiarities and inherent hazards of the business, has provided, among other things, as follows:

1. Defining "mine."
2. Defining "operator."
3. For maps of each mine and depositing with inspector of mines showing ore mined, arrangement of haulage roads, air courses, breakthroughs, brattices, air-bridges, or overcasts, doors, and providing penalties.
4. Recording maps with county recorder.
5. Certified copy of maps to be used as evidence in any court of the state.
6. Room in state house provided to preserve maps.
7. Forbidding more than 10 persons to work after 5,000 square yards have been excavated until second outlet is provided.
8. Air and escape shafts separated from hoisting shafts by 200 feet of natural strata, and provided with stairways not less than two feet in width and at an angle of not more than 50 degrees, with landings and guard-rails.
9. Escape and air shafts, when combined, to be separated by substantial partitions.

10. Control of air currents of overcasts and undercasts.
11. Approaches to escape shafts to be kept free from falling slate, mine tracks, mine cars and other debris.
12. Control of surface water by rings and preventing wetting persons descending and ascending shafts.
13. Permitting hoisting apparatus at escape shafts.
14. Traveling roads, or gangways, to outlet separated by 200 feet of natural strata and not less than four feet in height or less than four feet in width and free from water as average haulage roads.
15. Placement of conspicuous sign boards to places of exit.
16. Prohibiting inflammable structures or powder magazines near escape way, jeopardizing the workmen.
17. Explosive materials to be stored in fire proof buildings on surface located not less than 300 feet from any other building.
18. Fans prohibited from being located directly over the opening of an air shaft or escapement shaft, and arranged so as to enable the air current to be reversed.
19. Providing for wire ropes in hoisting cages, fastened to a drum and examined every morning by some competent person.
20. Cage covers of ¼-inch boiler plate overhead on all carriages or cages.

21. Providing for improved safety gates and safety spring on top of every slope.
22. Approved safety catches shall be attached to every cage.
23. Persons prohibited from riding on cages during hoisting and limited to six men at a time.
24. Drums shall be equipped with brakes.
25. Indictors shall be attached to hoisting apparatus.
26. Vertical or flat gates protecting the mouth of each mine.
27. Two lighted lamps at shaft during mine operation.
28. Gates hung at each vein except the lower one, preventing men from falling into the shaft.
29. Number of lamps may be increased by inspector.
30. Safety lamps provided by and to be property of operator and remain in the custody of mine boss, who shall keep them in condition and locked while in use.
31. Metal speaking tubes from top to bottom suitably adapted to free passage of sound.
32. Code of signals with bells or whistle, the copy of the statutory code to be conspicuously posted on top and bottom and in engine room.
33. Abandoned mines to be securely fenced off.
34. Operator to provide for scale of standard manufacture, and compelled to keep U. S. standard weights to test the scales.
35. Weighman and check-weighman to examine and balance scales each morning.
36. Each miner's car of coal to be weighed and tabulated.

37. Disputes over scales and weights to be referred to inspector of mines.
38. Owners of land given right of examination of scales and weights.
39. Employment of sober, competent engineers, who shall refuse to permit loitering in engine room.
40. Men shall not be lowered or hoisted exceeding 600 feet per minute.
41. Ventilation affording not less than 100 cubic feet of air per minute for each person employed, and 300 cubic feet for each horse or other animal measured at foot of downcast, and as much more as circumstances may require.
42. Air shall be forced and circulated around main entries, cross entries and working places so said mine shall be free from standing gas and render harmless all noxious and dangerous gases.
43. Places where fire damp is known or supposed to exist shall be examined by competent fire boss before each shift, who shall mark the dangerous places.
44. Regulating ventilation furnaces.
45. Employment of competent mine bosses who shall take down all loose coal, slate and rock overhead on the traveling and airway.
46. Providing for measuring of air currents at least once a week at the inlet or outlet, and report to inspector once each month.
47. Air currents split for at least every 50 persons and inspector may order separate currents.
48. Mine inspector may close down a mine after notice

to operator of unsafe conditions, when the operator shall refuse to rectify the same.

49. Break-throughs shall be constructed every 45 feet, and those, except near the working faces, shall be closed and made air tight.
50. Providing for trappers and automatic or mechanical doors, subject to the approval of inspector of mines.
51. All dry roadways and entries that are charged with dust shall be regularly and thoroughly sprinkled.
52. Mine boss to examine every working place at least every alternate day.
53. Shall supply sufficient timbers, props and caps of proper lengths to working places to secure the works from caving in.
54. Shall secure unsafe places on notice.
55. Written form of receipt of notice prescribed.
56. Accidents and deaths to be reported to inspector, and deaths reported to coroner.
57. Traveling ways provided.
58. Places of refuge three feet deep and not more than 20 yards apart in certain mines of gravity or incline planes.
59. On hauling roads where hauling is done by animals refuge places must be cut in the side wall at least 2½ feet deep, measured from side of the car.
60. At all mimes employing 10 or more men, the operator must provide a comfortable stretcher, a woolen water-proof blanket, a roll of bandages,

a supply of linseed oil, lime, camphor, turpentine, antiseptic gauze, dressing and surgeon's splints for the dressing of broken bones, and provide comfortable apartment near mouth of the mine in which any one injured may rest while awaiting transportation to his home, and provide for the speedy transportation of any one injured in such mine to his home.

61. Entries shall be cut and constructed so a space shall be provided on one or both sides continuously of any track of at least two feet in width free from props, loose slate, debris, or other obstructions, except in the block coal mines, which are exempted. Stringent penalties are provided for the violating of these provisions.
62. The law regulates abandoned workings containing dangerous accumulations of water or gases.
63. The operator shall supply a timber blackboard where miners may indicate the number and lengths of the same.
64. Penalties are provided for the interfering or injuring of safety appliances and machinery of any mine.
65. Lights shall be placed at least five feet distant from powder kegs or boxes when being opened.
66. When blasting off the solid holes shall not be drilled for blasting more than one foot past the end of his cutting or loose end, or prepare a shot in such a way that the distance from the hole to the loose end shall be more than five feet measured at right angles to the direction of the hole.

67. No steel or iron needle or tool shall be used in tamping, but the needle and tamping bar shall be copper.

68. No coal dust or inflammable material shall be used in tamping and some soft material shall be placed next to the cartridge.

69. Only pure animal or vegetabl oil or oils free from smoke shall be used for illuminating purposes, all oils to be tested by state oil inspector, or his deputies, at 70° Fahrenheit. The specific gravity of oil must not exceed 24°. An elaborate system of testing is further provided.

70. A check-weighman is provided for and his wages shall be paid by the miners.

71. The law somewhat elaborately provides for the creation of the office of inspector of mines and deputies, who shall have certain qualifications, and who shall hold examinations for the purpose of issuing mine boss and fire boss licenses to those passing the examinations, and in all mines containing dangerous gases operators are required to employ competent licensed fire bosses. The inspector of mines, under the law, gathers and publishes statistical data for public information.

72. The mining laws provide for the payment of wages and gives miners' wage for labor liens and priority of payment.

73. It also gave injured employes and dependents certain civil rights of actions and remedies, since supplanted by the employers' liability act of

1911, and since supplanted by the amended section 18 of the workmen's compensation law, which singled out the coal industry and made it compulsory to all operators and employes engaged in the business of mining coal.

74. Adjacent owners or occupants of coal lands are given the right of examination, exploration, surveying and inspection.

75. It is made unlawful without consent of the mine management to take any dynamite or dynamite cap or other high explosive into any mine.

76. It shall be unlawful for any person for the purpose of blasting coal in any mine in this state to prepare any "shot" in such a way that the distance from the drill hole to the "loose end," chance or end of cutting shall be more than five feet measured at right angles to the direction of the hole; or to place any charge of powder or other explosive in any drill hole prepared for any "shot" in which the breast of coal to be dislodged is of greater width than the depth of the drill hole; or to use in preparing any "shot" more than six pounds of powder; or to place any powder in any drill hole for the purpose of preparing any "shot" without measuring the amount so placed therein with a substantial measure so made as to indicate the weight of blasting powder measured therein; or to open a keg, can or other package containing powder by means of a pick or in any other manner except in pursuance of the

manner provided in the manufacture of such keg, can or package; or to sell or offer for sale any keg, can or package containing powder, unless such can, keg or package be provided with a sufficient device for opening the same and permitting the discharge therefrom of all the powder therein contained; or to store any blasting powder, dynamite or other high explosive in any coal mine; or to prepare any drill bit more than 3¼ inches in diameter to be used in boring holes for the purpose of preparing any shot or to use any dynamite or other high explosive in conjunction with black powder. It shall be unlawful for any owner, operator or lessee of any coal mine, coal shaft or slope coal mine to refuse, fail or neglect to sharpen and prepare for use any bit for preparing drill holes, if such bit is 3¼ inches in diameter, or less, and such owner, operator or lessee, or his representatives, has been requested to prepare and sharpen the same by any owner of such bit or bits.

77. Section 8605 provides certain facts shall constitute prima facie evidence of guilt.

78. Section 8606 provides: It shall be unlawful in any coal mine for any person to explode or light any shot in any working place simultaneously with the explosion or lighting of any shot by the same or any other person in any other working place on the same entry, except in working places where the coal is under cut by machinery.

79. Operators shall provide suitable materials for tamping.

80. Section 8610, Burns' Rev. 1914, provides: That at any coal mine in the state where the miners working therein so elect, persons may be employed to act as shot firers and their wages shall be paid by the miners working therein: Provided, That nothing herein contained shall affect any existing contract as to shot firing.

81. The inspector of mines and his deputies are empowered to act as police officers.

82. Certain penalties are provided for the failure of an inspector to perform his lawful duties or any other law relating to the health and safety of persons employed in coal mines and matters connected therewith.

83. Section 8618 Burns' supra, provides: That the chemist to the state board of health shall at stated times hold examinations for coal miners 21 years of age, and possessing a good moral character, and who has had at least five years' practical experience as a coal miner, as eligible for inspector of mines.

84. Section 8623 provides for wash houses and penalties for the violation of the provisions of said act.

85. Section 8624l, inclusive, provides for the creation of a miners' examining board in certain counties and the issuance and rejection of certificates of competency. The legislature used these words: "That the business of mining

coal is hereby declared a dangerous occupation, industry and business. Under the provisions of this law no one can lawfully engage in the business of mining coal until he has passed the prescribed legal requirements.

As an Example of how 45 States and Territories have made different Classifications as to employments, covered and not covered as to Compulsory Compensation, varied and different kinds of Insurance, Maximum and Minimum periods and amounts of money for Medical Services, and Waiting Periods, we herewith submit the following Table, prepared by the United States Department of Labor, Bureau of Labor Statistics, covering the principal features of Laws relating to Workmen's Compensation and Insurance, according to the Chart, revised January 1st, 1920. These States are in operation and none have been declared unconstitutional.

APPENDIX "C"

STATE	Date Act Became Effective	Employemats Not Covered	Compensation Compulsory or Elective	Insurance	Medical Service		Waiting Period
					Maximum Period	Maximum Amount	
Alabama	1920 (Jan. 1)	Less than 16 employees. Municipal employees. Farm labor. Casual labor[1]. Domestic service.	Elective	Not required	60 days	$100	2 weeks. Non if disabled 4 weeks.
Alaska	1915 (July 28)	All except mining operations having 5 or more employees. Public employees.	Elective	Not required	No provision	No provision	2 weeks. None if disabled 8 weeks.
Arizona	1912 (Sept. 1)	Nonhazardous. Public employees.	Compulsory	Not required	No provision	No provision	2 weeks. None if disabled over 2 weeks
California	1911 (Sept. 1)	Farm labor. Casual labor[1]. Domestic service.	Compulsory	State fund. Private companies. Self-insurance.	Unlimited	Unlimited	1 week.
Colorado	1915 (Aug. 1)	Less than 4 employees. Domestic service. Farm labor. Casual labor[1].	Elective	State fund. Private companies. Self-insurance.	60 days	$200	10 days.
Connecticut	1914 (Jan. 1)	Less than 5 employees. Outworkers. Casual labor.	Elective	Private companies. Self-insurance.	Unlimited	Unlimited	1 week. None if disabled over 4 weeks.
Delaware	1918 (Jan. 1)	Less than 5 employees. Public employees. Farm labor. Outworkers. Domestic service. Casual labor[1].	Elective	Private companies. Self-insurance.	2 weeks	$75	2 weeks. None if disabled 4 weeks.
Hawaii	1915 (July 1)	Nonindustrial. Employees receiving over Casual labor[1]. $36 a week.	Compulsory	Private companies. Self-insurance.	Unlimited	$150	1 week. None if partially disabled.
Idaho	1918 (Jan. 1)	Farm labor. Casual labor. Domestic service. Outworkers. Employees receiving over $2,400 a year. Charitable institutions.	Compulsory	State fund. Private companies. Self-insurance.	Unlimited	Unlimited	1 week.

Illinois	1912 (May 1)	Nonhazardous Farm labor	Casual labor[1]	Compulsory	Private companies Self-insurance	8 weeks[2]	$200[2]	1 week. None if disabled 4 weeks.
Indiana	1915 (Sept. 1)	Farm labor Domestic service	Casual labor[1] Railroad employees in train service	Compulsory as to mining	Private companies Self-insurance	30 days[2]	Unlimited	1 week.
Iowa	1914 (July 1)	Farm labor Domestic service	Casual labor[1] Nonhazardous clerical occupations	Elective	Private companies Self-insurance	4 weeks	$100[2]	2 weeks.
Kansas	1912 (Jan. 1)	Nonhazardous Hazardous employments having less than 5 employees Farm labor	Casual labor[1] State employees and municipal employees except workmen	Elective	Not required	50 days	$150	1 week.
Kentucky	1916 (Aug. 1)	Less than 3 employees Farm labor	Domestic service	Elective	Private companies Self-insurance	90 days	$100	1 week.
Louisiana	1915 (Jan. 1)	Nonhazardous	Casual labor[1]	Elective	Not required	Unlimited	$150	1 week. None if disabled six weeks.
Maine	1916 (Jan. 1)	Less than 6 employees Farm labor Domestic service	Casual labor[1] Logging operations	Elective	Private companies Self-insurance	30 days[2]	$100[2]	10 days.
Maryland	1914 (Nov. 1)	Nonhazardous Farm labor Domestic service Nonhazardous public employments	Casual labor Country blacksmiths Employees receiving over $2,000 a year	Compulsory	State fund Private companies Self-insurance	Unlimited	$150	2 weeks. 1 week if totally and permanently disabled
Massachusetts	1912 (July 1)	Farm labor Domestic service Casual labor[1]	State employees, except workmen	Elective	Private companies	2 weeks[2]	Unlimited	10 days.
Michigan	1912 (Sept. 1)	Farm labor Domestic service	Casual labor[1]	Elective	State fund Private companies Self-insurance	90 days	Unlimited	1 week. None if disabled six weeks.
Minnesota	1913 (Oct. 1)	Farm labor Domestic service State employees	Casual labor[1] Steam railroads	Elective	Not required	90 days[2]	$100[2]	1 week.

APPENDIX "C"

STATE	Date Act Became Effective	Employments Not Covered		Compensation Compulsory or Elective	Insurance	Medical Service		Waiting Period
						Maximum Period	Maximum Amount	
Missouri	Approved 1919 (Apr. 28)	Less than 5 employees Farm labor Domestic service Casual labor[1]	Outworkers Employees receiving over $3,000 a year	Elective	Private companies Self-insurance	8 weeks	$200	1 week. None if disabled over six weeks
Montana	1915 (July 1)	Nonhazardous Farm labor	Domestic service Casual labor[1]	Elective	State fund Private companies Self-insurance	2 weeks	$50	2 weeks.
Nebraska	1914 (Dec. 1)	Farm labor Domestic service	Casual labo[1] Outworkers	Elective	Private companies Self-insurance	Unlimited	$200	1 week. None if disabled 6 weeks
Nevada	1911 (July 1)	Farm labor Domestic service	Casual labor[1]	Elective	State fund	90 days[2]	Unlimited	1 week. None if disabled 2 weeks.
New Hampshire	1912 (Jan. 1)	Nonhazardous Factories having less than 5 workmen	Public employees	Elective	Self-insurance	No provision	No provision	2 weeks.
New Jersey	1911 (July 4)	Casual labor		Elective	Private companies Self-insurance	4 weeks[3]	$50[3]	10 days.
New Mexico	1917 (June 8)	Nonhazardous Hazardous employments having less than 4 employees	Public employees Casual labor[1]	Elective	Private companies Self-insurance	2 weeks	$50	2 weeks.
New York	1914 (July 1)	Nonhazardous employments having less than 4 workmen.	Farm labor Domestic service	Compulsory	State fund Private companies Self-insurance	60 days[2]	Unlimited	2 weeks. None disabled over 7 weeks.
North Dakota	1919 (Mar. 5)	Farm labor Domestic service	Casual labor[1] Steam railroads	Compulsory	State fund	Unlimited	Unlimited	1 week. None disabled over 1 week.
Ohio	1912 (Jan. 1)	Less than 5 employees	Casual labor[1]	Compulsory	State fund Self-insurance	Unlimited	$200[4]	1 week.

Oklahoma	1915 (Sept. 1)	Nonhazardous Hazardous employments having less than 3 employees Farm labor	Clerical occupations Nonhazardous public employments	Compulsory	Private companies Self-insurance	60 days[2]	$100[3]	1 week. None if disabled 3 weeks.
Oregon	1913 (July 1)	Nonhazardous	Farm labor	Elective	State fund	Unlimited	$250[3]	None.
Pennsylvania	1916 (Jan. 1)	Farm labor Domestic service	Casual labor[1] Outworkers	Elective	State fund Private companies Self-insurance	30 days	$100[3]	10 days.
Porto Rico	1916 (July 1)	Less than 3 employees Farm labor Domestic service Nonhazardous clerical occupations	Public employees not engaged on public works Employees receiving over $1,500 a year	Elective	State fund	Unlimited	Unlimited	None.
Rhode Island	1912 (Oct. 1)	Less than 6 employees Farm labor Domestic service	Casual labor[1] Employees receiving over $1,800 a year	Elective	Private companies Self-insurance	4 weeks	Unlimited	2 weeks. None if disabled over 4 weeks.
South Dakota	1917 (June 1)	Farm labor Domestic service	Casual labor[1]	Elective	Private companies Self-insurance	12 weeks	$150	10 days. None if disabled 6 weeks.
Tennessee	1919 (July 1)	Less than 10 employees Farm labor Domestic service	Public employees Coal mines Casual labor[1]	Elective	Private companies Self-insurance	30 days	$100	2 weeks. None if disabled 6 weeks.
Texas	1913 (Sept. 1)	Less than 3 employees Farm labor Domestic science	Public employees Railways Casual labor[1]	Elective	Private companies	2 weeks[2]	Unlimited	1 week.
Utah	1917 (July 1)	Less than 3 employees Farm labor	Domestic service Casual labor[1]	Compulsory	State fund Private companies Self-insurance	Unlimited	$500	3 days.
Vermont	1915 (July 1)	Less than 11 employees Domestic service State employees	Casual labor[1] Employees receiving over $2,000 a year	Elective	Private companies Self-insurance	2 weeks	$100	1 week.
Virginia	1919 (Jan. 1)	Less than 11 employees Farm labor Domestic service	Casual labor[1] Steam railroads	Elective	Private companies Self-insurance	30 days	Unlimited	2 weeks.

APPENDIX "C"—Concluded.

STATE	Date Act Became Effective	Employments Not Covered	Compensation Compulsory or Elective	Insurance	Medical Service		Waiting Period
					Maximum Period	Maximum Amount	
Washington	1911 (Oct. 1)	Nonhazardous. Nonhazardous public employments	Compulsory	State fund	Unlimited[3]	Unlimited[3]	1 week. None if disabled over 30 days.
West Virginia	1913 (Oct. 1)	Farm labor. Casual labor[1]. Domestic service. Traveling salesmen	Elective	State fund. Self-insurance	Unlimited	$800	1 week.
Wisconsin	1911 (May 3)	Less than 5 employees. Casual labor[1]. Farm labor	Elective	Private companies. Self-insurance	90 days[2]	Unlimited	1 week. None if disabled over 4 weeks.
Wyoming	1915 (Apr. 1)	Nonhazardous. Casual labor[1]. Nonhazardous public employments. Nonhazardous clerical occupations	Compulsory	State fund	Unlimited	$100	10 days. None if disabled over 30 days.
United States	1908 (Aug. 1). 1916 (Sept. 7)		Compulsory		Unlimited	Unlimited	3 days.

[1]Or employed otherwise than for the purpose of the employer's trade, business, or profession.
[2]Additional service in special cases or at discretion of commission.
[3]Employees must pay one-half medical cost.

SUPREME COURT OF THE UNITED STATES.

No. 186.—October Term, 1920.

Lower Vein Coal Company, Appellant, vs. Industrial Board of Indiana et al. } Appeal from the District Court of the United States for the District of Indiana.

[February 28, 1921.]

Mr. Justice McKenna delivered the opinion of the Court.

Appellant, the Lower Vein Coal Company, is a corporation of the State of Indiana. The Industrial Board of Indiana is a board created by an Act of the General Assembly of Indiana, approved March 8, 1915, known as "The Indiana Workmen's Compensation Act". The personal appellees are members of the board.

This suit was brought by the Coal Company to enjoin the Industrial Board, the Governor and Attorney General of the State, from enforcing in any manner, Section 18 of the Workmen's Compensation Act of the State, as amended by the General Assembly in 1919, from asserting that plaintiff is compelled to operate under the Compensation Act, from hearing any claim for compensation asserted by any employe of the plaintiff so long as plaintiff elects not to come within the provisions of the act from making any award to any injured employe, or his or her dependents, during such time, and from doing any other act or thing prejudicial to the rights of the plaintiff, so long as it elects not to be bound by the act.

The grounds for this relief were set forth in a complaint of considerable length to which the defendants separately and severally answered. After trial of the issues thus presented the District Court entered its decree dismissing the bill for want of equity. This appeal was then prosecuted.

The Compensation Act is very long and declares its purposes to be to promote the prevention of industrial accidents; to cause provision to be made for adequate medical and surgical care for in-